

# **REAUTHORIZATION OF THE U.S. PAROLE COMMISSION**

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**HEARING**  
BEFORE THE  
SUBCOMMITTEE ON CRIME, TERRORISM,  
AND HOMELAND SECURITY  
OF THE  
COMMITTEE ON THE JUDICIARY  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED TENTH CONGRESS  
SECOND SESSION

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JULY 16, 2008

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## **REAUTHORIZATION OF THE U.S. PAROLE COMMISSION**

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**WEDNESDAY, JULY 16, 2008**

**HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON CRIME, TERRORISM,  
AND HOMELAND SECURITY  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.***

The Subcommittee met, pursuant to notice, at 5:08 p.m., in room 2237, Rayburn House Office Building, the Honorable Robert C. "Bobby" Scott (Chairman of the Subcommittee) presiding.

Present: Representatives Scott, Jackson Lee, and Gohmert.

Staff Present: Jesselyn McCurdy, Majority Counsel; Bobby Vassar, Majority Chief Counsel; Rachel King, Majority Counsel; Veronica Eligan, Professional Staff Member; Caroline Lynch, Minority Counsel; Kimani Little, Minority Counsel; and Kelsey Whitlock, Minority Administrative Assistant.

Mr. SCOTT. The Subcommittee will come to order. Mr. Gohmert and I understand that Mr. Linn has a plane to catch and would like to testify, and I will defer our opening statements so that we can hear from Mr. Linn at this time. Mr. Linn.

### **TESTIMONY OF KENNETH LINN, DIRECTOR, FEDERAL CURE**

Mr. LINN. Chairman, Committee Members, thank you for this opportunity to address you. My name is Kenny Linn. I am the Chairman of the Federal chapter of CURE. That is the Citizens United for the Rehabilitation of Errants, an organization that has been around since 1972. I represent the thoughts and the feelings of 202,000 Federal inmates, their families, their loved ones and their friends.

I am not going to address you today about the obvious. There will be other witnesses that can tell you about the 13,000 people that are still under the auspices of the United States Parole Commission. I would rather talk about something that I feel is more important.

These are my feelings, the feelings of our board of directors and of our organization. It is inevitable that some form of early release is looming. We have no reasonable alternative option. We cannot continue down the present path because it is cost prohibitive to build the necessary prisons to house the future population at our present rate of incarceration, and it is unjust and inequitable to put mostly nonviolent first offenders in prison for the majority of their adult lives.

There are presently nearly 202,000 incarcerated Federal inmates. The number has increased exponentially since 1987 with no end in sight for this significant growth fueled by draconian sentences put in place by the United States Sentencing Commission's reliance on guidelines and Congress' mandatory minimums. More than half, 55 percent of Federal prisoners are serving time for drug-related crimes. Nearly three-fourths, 72 percent, of the Federal prison population are nonviolent offenders. More than one-fourth, 34.4 percent, are first-time nonviolent offenders.

Even though 97 percent of Federal inmates eventually are released, discharge may not occur for many years because better than 9 out of 10 inmates convicted of Federal crimes will be released only after serving approximately 87.5 percent of their sentences under the new sentencing guidelines. New law inmates have no incentive to rehabilitate and are all painted with the same brush.

Since the bulk of the population is new law, the result has been prison overcapacity, facility instability and increased danger to both inmates and staff. The new system essentially doubled the sentences that judges were forced to impose with no chance for early release and these sentences have uniformly been initiated and determined by the charging decisions of prosecutors.

In contrast, old law inmates have an opportunity pursuant to the United States Parole Commission's discretion for early release from prison and early termination of parole. Historically, the United States Parole Commission has promoted public safety and justice by fairly exercising its authority to release and supervise offenders under its jurisdiction through a conscious application of its own guidelines in each case. It has done this by a willingness to give due regard to individual circumstances while applying the least restrictive sanction that is consistent with public safety and the appropriate punishment for the offense.

Lengthy sentences have an inordinate impact on inmates' families, particularly on children who must be raised in broken families. Moreover, with the loss of a wage earner, inmates' families are forced onto the welfare roles with the resulting negative impact on State budgets. Depending upon whose numbers one wishes to use, the cost to the country to incarcerate our huge Federal population runs approximately \$30,000 to \$40,000 per inmate per year. The total operational cost exceeds \$6 billion yearly and, if one includes amortization of land and buildings, the total cost is more than \$8 billion.

Our prison population is aging dramatically. The cost to house older inmates is twice that of younger inmates because of the increased medical costs. Our conclusion is that inmates can be rehabilitated and should have a second chance to lead positive lives. The fact that there are over 18,000 Federal inmates with sentences longer than 20 years, most of whom are nonviolent and many of whom are first-time offenders, indicates that review of these sentences by the United States Parole Commission would be attractive and advantageous to reducing the burgeoning prison population and its attendant costs. An existing Federal agency with inmate release expertise is standing by to take over supervision of this plan.

The United States Parole Commission should not only be extended, it should be expanded and made permanent not only to ad-

minister its present mandate of those 13,000 people under its auspices but also to be given a new mandate; namely, to review lengthy sentences so as to cut costs and set fair release dates.

Thank you.

[The prepared statement of Mr. Linn follows:]

PREPARED STATEMENT OF KENNETH LINN

I. THE U.S. PAROLE COMMISSION'S MANDATE SHOULD BE EXTENDED.

Although the U.S. Parole Commission (hereinafter USPC) was supposed to go out of business in 1987, it has consistently been given extensions over the years because of the thousands of "old law" inmates remaining under its jurisdiction (either still incarcerated or under post-incarceration supervision) and because those convicted under District of Columbia statutes have been placed under USPC management after the demise of the old DC Board of Parole. Control of the aforementioned supervisees is administered by U.S. Probation Services. The same probation officers that direct "new law" supervisees handle those under the "old law" as well albeit under a different set of rules. Any new change in procedures for these thousands of ex-felons might very well raise ex post facto concerns.

If for no other reason than the sheer number of present and former inmates involved, it would be a monumental effort to legally change the rules and regulations that affect those supervisees presently being administered by the USPC. Moreover, many of those affected have not yet been given a release date by the USPC as provided by the Sentencing Reform Act of 1987.

II. THE U.S. PAROLE COMMISSION'S MANDATE SHOULD BE MADE PERMANENT.

The USPC has been extended four times since it was supposed to wrap up business in 1987. It presently has a staff that exceeds 100 people and a budget of more than \$10 million yearly. However, the USPC is continually given supplementary tasks to accomplish. The original idea was for the USPC to establish a release date for each and every inmate, oversee those inmates after release, direct their conditions of parole, terminate parole at the appropriate time and revoke their freedom if a serious violation of parole regulations occurred. Two new tasks given to the USPC in recent years include command of District of Columbia inmates and authority over treaty transfer prisoners from foreign countries.

Some agency must continue all of this work and what better agency than the existing USPC—rather than reinvent the wheel with a new bureaucracy. It seems to make little sense to "reauthorize" and "extend" the USPC every few years rather than make them a permanent body continuing with the same responsibilities presently in place. New related responsibilities may also arise.

III. THE U.S. PAROLE COMMISSION SHOULD BE EXPANDED.

It is inevitable that some form of early release is looming. We have no reasonable alternative option. We cannot continue down the present path because it is cost prohibitive to build the necessary prisons to house the future population at our present rate of incarceration and it is unjust and inequitable to put mostly non-violent first-offenders in prison for the majority of their adult lives.

There are presently nearly 202,000 incarcerated federal inmates. The number has increased exponentially since 1987 with no end in sight for this significant growth—fueled by draconian sentences put in place by the U.S. Sentencing Commission's reliance on guidelines and Congress' mandatory minimums. More than half (55%) of federal prisoners are serving time for drug related crimes. Nearly three-fourths (72%) of the federal prison population are non-violent offenders. More than one-fourth (34.4%) are first-time non-violent offenders.

Even though 97% of federal inmates eventually are released, discharge may not occur for many years because better than nine out of ten inmates convicted of federal crimes will be released only after serving approximately 87.5% of their sentences under the new Sentencing Guidelines. "New law" inmates have no incentive to rehabilitate and are all painted with the same brush. Since the bulk of the population is "new law" the result has been prison overcapacity, facility instability and increased danger to both inmates and staff. The new system essentially doubled the sentences that judges were forced to impose with no chance for early release and these sentences have uniformly been initiated and determined by the charging decisions of prosecutors.

In contrast, "old law" inmates have an opportunity (pursuant to USPC's discretion) for early release from prison and early termination of parole. Historically, USPC has promoted public safety and justice by fairly exercising its authority to release and supervise offenders under its jurisdiction through a conscious application of its own guidelines in each case. It has done this by a willingness to give due regard to individual circumstances while applying the least restrictive sanction that is consistent with public safety and the appropriate punishment for the offense.

Lengthy sentences have an inordinate impact on inmates' families, particularly on children who must be raised in broken families. Moreover, with the loss of a wage earner, inmates' families are forced onto the welfare rolls with the resulting negative impact on state budgets. Depending upon whose numbers one wishes to use, the cost to the country to incarcerate our huge federal population runs approximately \$30,000 to \$40,000 per inmate per year. The total operational cost exceeds \$6 billion yearly and if one includes amortization of land and buildings total cost is more than \$8 billion. Our prison population is aging dramatically. The cost to house older inmates is twice that of younger inmates because of the increased medical costs.

#### CONCLUSION

Inmates can be rehabilitated and should have a second chance to lead positive lives. The fact that there are over 18,000 federal inmates with sentences longer than twenty years most of whom are non-violent and many of whom are first-time offenders indicates that review of these sentences by the USPC would be attractive and advantageous to reducing the burgeoning prison population and its attendant costs. An existing federal agency with inmate release expertise is standing by to take over supervision of this plan. The USPC should be extended, expanded and made permanent, not only to administer its present mandate, but also to be given a new mandate, namely to review lengthy sentences so as to cut costs and set fair release dates.

Mr. SCOTT. Thank you. Mr. Gohmert for questions.

Thank you. Thank you, Mr. Linn. Good luck on your plane.

Mr. LINN. Thank you, Mr. Scott. Thank you all.

Mr. SCOTT. Congresswoman Norton.

Congresswoman Norton is in her ninth term as a Delegate from the District of Columbia. She is a Chair of the House Subcommittee on Economic Development, Public Buildings, and Emergency Management. She was named by President Carter as the first woman to chair the EEOC commission and came to Congress as a civil rights feminist leader, tenured law professor and board member of three Fortune 500 companies.

Ms. Norton, we are pleased to hear your testimony about the effects of this legislation on Washington, DC.

#### **TESTIMONY OF THE HONORABLE ELEANOR HOLMES NORTON, A DELEGATE IN CONGRESS FROM THE DISTRICT OF COLUMBIA**

Ms. NORTON. Well, I thank you very much, Mr. Chairman, especially for scheduling this hearing so expeditiously because extension of the United States Parole Board is a vital public safety measure and it is due to expire November 1, 2008. I do have to apologize that this is not the last time you shall have to have expanded the Commission. It was expanded only 3 years ago for 3 years despite the fact that this is a permanent Federal commission that deals with a vital public safety concern that is increasing even as the number of Federal prisoners under its jurisdiction diminishes because Federal parole has been abolished. A growing number of District of Columbia, D.C. Code felons, however, do and will perpetually come under the jurisdiction of the United States Parole Board, owing to a decision about 10 years ago by the Federal Gov-

ernment at the request of the District of Columbia to assume the costs of certain State functions, because the District of Columbia is and remains the only jurisdiction in the United States that pays for State felons like housing, State matters like housing State felons. Our prisoners are now in the Bureau of Prison and the U.S. Parole Commission has jurisdiction.

In the meantime, the Federal Government began about 20 years ago phasing out this Commission because the number of Federal code offenders was diminishing since new ones were not being added since the sentencing guidelines were passed.

When Congress passed the National Revitalization Act, however, they created what amounts to a local Federal hybrid with the local wagging the tail, if I may say so, because we are talking about, as I speak, something over 2,500 Federal offenders whereas we now have close to 10,000 D.C. Code offenders under the jurisdiction of the Commission.

Mr. Chairman, I have to tell you that the only reasonable thing to do would have been to grant permanent status to this Commission, just as we had that before. The only reason that it was phasing down and put on 3-year cycles, it was going out of business. Well, the Justice Department has been on automatic pilot. And when we approached them and said, why should we bother the Congress, take them away from urgent business every 3 years to say, to ask them to keep extending the Commission, they refused to do so. I was very puzzled by that refusal. Then I said, go back to them. How about 5 years? Why should we be back again here asking for an extension of a Federal entity whose public safety mission is permanent and is important both to the Federal Government and to the District of Columbia?

One gets impatient with refusals of that kind because it is the inescapable reality that this Commission is going to be there. And it is also the case that Congress knows how at least since we became the majority to do the needed oversight and you don't need a 3-year cycle or you should not need a 3-year cycle to do oversight of the United States Parole Commission.

So you are going through what I regard as a needlessly mandatory ritual, and get ready to see us again in 3 years.

Now more seriously, the courts have taken note of the fact that this Commission could—of course it could not, we have already spoken with the Senate—could go out of existence. So we have the Third Circuit having ordered the Commission, as I understand it, 3 to 6 months before the date when the Commission was due to expire, to begin taking action in light of expiration. What the Commission has had to do is quite artificial and could be risky. Or may have to do. You will hear directly from the Chair. And that is to say, to adjust prisoners' release dates, which is at odds with what the statute may have intended in order to allow for the possibility of appeal in case parole is denied.

Now for a moment, I ask you to imagine what would happen if other circuits also decide to ask the Commission to take such steps. What they have already asked may prove unworkable. I don't think it would be possible if other circuits were asked, but courts are in the business of making sure that they are not due process violations, not in the business of doing our business. So notwithstanding

the rank and efficiency involved in coming back in another 3 years, we are here to ask for another short statutory life with the promise that I will be back asking for the permanent extension, allowing you to do whatever oversight you think appropriate but not having a hearing of this kind which puts in jeopardy the Commission itself and its growing jurisdiction over larger and larger numbers of D.C. Code felons.

So I ask rapid passage of this bill, that it be put on suspension. And we have already been in touch with the Senate, indicate what is at stake here. So I think all are concerned, and that is why I so appreciate your getting to us so quickly.

[The prepared statement of Ms. Norton follows:]

PREPARED STATEMENT OF THE HONORABLE ELEANOR HOLMES NORTON, A DELEGATE  
IN CONGRESS FROM THE DISTRICT OF COLUMBIA

ELEANOR HOLMES NORTON  
DISTRICT OF COLUMBIA

COMMITTEE ON  
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INFRASTRUCTURE  
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Congress of the United States  
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SERVICE, AND DISTRICT OF COLUMBIA  
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TRANSPORTATION SECURITY, AND  
INVESTMENT PROTECTION  
EMERGENCY COMMUNICATION,  
PREPAREDNESS, AND RESPONSE

**Testimony of Eleanor Holmes Norton  
on the United States Parole Commission Extension Act of 2008**  
July 16, 2008

Thank you for the opportunity to testify concerning the extension of the United States Parole Commission, vital to provide for the continued operations of the Commission. You have my special gratitude for holding this hearing so expeditiously in light of the expiration of the Commission on November 1, 2008. Among a number of important changes requested by elected District officials, the National Capital Revitalization and Self-Government Improvement Act of 1997 transferred the city's responsibility for D.C. Code felons to federal jurisdiction; made the U.S. Parole Commission the responsible agency; and abolished the District of Columbia Board of Parole. The Revitalization Act also required the Parole Commission to assume jurisdiction for parole release decisions and mandatory release supervision and revocation decisions by August 5, 2000. The U.S. Parole Commission also has continued its jurisdiction over parole matters for ex-offenders whose convictions for federal crimes occurred before the new federal sentencing guidelines that abolished before federal parole took effect. However, the numbers of federal offenders as well as pre-2000 D.C. Code offenders have been diminishing ever since. The Commission has been phasing out federal offenders for 20 years, but new D.C. Code offenders mandated by the Revitalization Act are continually added every year and require monitored supervised release. Thus, the Parole Board is a hybrid local-federal anachronism representing unfinished business for the Congress.

Today should have been the occasion to recognize the inescapable reality that the U.S. Parole Commission has a new, permanent role and a new set of parolees who will be added annually, assuring the permanency of the Commission's mission. However, my bill to give the Commission permanent status was turned away by the Attorney General's office, and that office would not even accept a five year extension. As a result of this bewildering refusal in the face of facts to the contrary, the House and the Senate today must take time from urgent national business, after only three years, to repeat a needlessly mandatory ritual we completed only in September 2005, when Congress, once again, extended the life of the Commission. The United States Parole Commission Extension and Sentencing Commission Authority Act, set to expire on November 1, 2008.

The effects of this short sighted approach are already playing out with counterproductive results. The Third Circuit Court of Appeals has ordered the Commission to plan for the

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expiration of the Commission three to six months prior to actual expiration or face due process challenges to release dates. Most seriously, this requirement could mean an artificial adjustment of prisoners release dates at odds with statutory intent in order to allow for appeal dates for inmates in light of their right to contest release dates before the Parole Commission expires. This order from a single circuit could prove unworkable. Imagine other circuits adopting a similar position, and it becomes clear that there is an urgent need for immediate passage of the bill to extend the Commission for at least three years, notwithstanding the rank inefficiency and needless work for the Commission and the Congress because of such a short a statutory life. This short, arbitrary sunset date for a federal commission with the important mission to monitor ex-felons is risky and totally unnecessary.

The public safety mission of the Commission should and will assure continuing oversight, perhaps more often than a three year cycle. For example, oversight hearings by the Subcommittee on the Federal Workforce, Postal Service and District of Columbia are planned on a number of Commission issues, most seriously, the unjust and counter productive loss of street time, regardless of the nature of the parole infraction, about which you will hear directly from a witness who has been harshly affected. To its credit the Parole Commission and the Court Services and Offender Supervision Agency (CSOSA) have worked diligently to mitigate some of these negative effects, but we are preparing more permanent statutory relief for introduction in the next Congress.

Currently, the Parole Commission has 2,512 federal offenders while it has 9,466 D.C. Code offenders. Without immediate Parole Commission extension, the supervised release of the 9,466 D.C. Code offenders will no longer be monitored. I ask that the Subcommittee on Crime, Terrorism and Homeland Security extend the U.S. Parole Commission to ensure that there is a supervised release program in place for D.C. Code and federal offenders.

Mr. SCOTT. Thank you very much. I just had one quick question. The Federal Parole Board is the parole board for those eligible for parole before parole was abolished. And so there is a diminishing number of Federal parolees, potential parolees. But the Parole Board also serves as the Parole Board for Washington, D.C. prisoners.

Is that right?

Ms. NORTON. That is right. In fact the Parole Board for Washington was abolished and the Congress gave U.S. Parole Board its jurisdiction.

Mr. SCOTT. And so this has a peculiar impact on Washington, DC?

Ms. NORTON. It does. In fact that is its major impact, Mr. Chairman. Basically a D.C. matter now. Indeed, we are looking at a matter that I believe was alluded to by Mr. Linn before, and that is the District of Columbia has the longest prison sentences in the world, in fact owing in part to some of the way the Commission operates. We are very pleased that the Court Services and Offender Administration—it is also Federal but it has jurisdiction over those who have been released from Bureau of Prisons—along with the Commission have taken steps to mitigate the effect of these longer sentences. And I am pleased that you will later hear from a witness from the District of Columbia who has had to bear these harsh effects so that you can see why our insisting upon oversight now and perhaps ultimately a longer life of the Commission is important.

Mr. SCOTT. Thank you. Mr. Gohmert.

Mr. GOHMERT. Thank you very much for your testimony.

Mr. SCOTT. Thank you.

Our next witness will be the Honorable Edward Reilly, the Chairman of the United States Parole Commission. Prior to his appointment to the Parole Commission, he served 29 years as a legislator of the State of Kansas. He served 1 year as a member of the Kansas City House of Representatives and 28 years in the Kansas State Senate. He is a member of the American Correctional Association, the Association of Paroling Authorities International, the National Criminal Justice Association, the National Committee on Community Corrections and the National Association of Chiefs of Police. He received his BA in political science from the University of Kansas.

Our next witness after that will be Mr. Horace Crenshaw, who started parole in January 1999 with a parole expiration date July 28, 2011. The past 2 years he has been employed by the A&D Auto Rental. He is a visual artist and received a Bachelor's Degree from Howard University in fine arts.

Our final witness will be David Muhlhausen, Senior Policy Analyst for the Heritage Foundation Center for Data Analysis. He is an expert in criminal justice programs, particularly law enforcement grant programs administered by the Department of Justice. He has testified before Congress on new challenges and needs of local enforcement as they take the lead in homeland security as well as the community-oriented policing service, the COPS program, and other Department of Justice initiatives. In addition to testifying on Federal law enforcement grants, Mr. Muhlhausen has

testified on improving the evaluation research done by DOJ and the deterrent effect of the death penalty.

I welcome all of our witnesses today. And thank you for joining us today. Your written statements will be entered in the record in their entirety. But I ask you to summarize your testimony in 5 minutes or less. And to help stay within that time, there is a timing light before you that will turn from green to yellow with 1 minute left and to red when the 5 minutes have expired.

And we will begin with Chairman Reilly.

**TESTIMONY OF THE HONORABLE EDWARD F. REILLY, JR.,  
CHAIRMAN, UNITED STATES PAROLE COMMISSION, UNITED  
STATES DEPARTMENT OF JUSTICE (DOJ); ACCCOMPANIED BY  
TOM HUTCHISON, CHIEF OF STAFF, AND ROCKNE  
CHICKINELL, GENERAL COUNSEL**

Mr. REILLY. Thank you, Mr. Chairman, Members of the Subcommittee. My name is Ed Reilly, Chairman of the United States Parole Commission. I have with me today, I would like to introduce my Chief of Staff, Mr. Tom Hutchison, and Mr. Rockne Chickinell, who is the legal counsel for the Commission.

I am very pleased to be here today to discuss the reauthorization of the U.S. Parole Commission. I have submitted a prepared statement that I understand has been made a part of the Subcommittee's hearing record.

By way of background, President George H.W. Bush appointed me to the Commission and named me Chairman in 1992. President Clinton continued me in that role until 1997 and President George W. Bush named me Chairman again in 2001.

Although the Sentencing Reform Act of 1984 abolished parole and the Parole Commission, the Commission still exists, and the usual question that I always get hit with is why. Well, the answer to that question is because the Commission carries out a number of important functions. Congresswoman Norton has mentioned those, including significant tasks given to the Commission by Congress after the enactment of the Sentencing Reform Act.

What are those functions? First, the Parole Commission makes parole release and revocation decisions for Federal offenders convicted of offenses committed before the U.S. sentencing guidelines took place; also for military offenders convicted of military crimes in military courts and serving their sentence in a Federal Bureau of Prisons facility.

Secondly, the Commission makes parole release and revocation decisions for parole eligible offenders convicted in the District of Columbia's Superior Court. Congress gave the Commission this responsibility when it enacted the D.C. Revitalization Act in 1997.

Third, the Commission sets and enforces the conditions of supervised release for District of Columbia offenders sentenced to a term of supervised release by the District of Columbia Superior Court. The majority of the Commission's work in this regard involves making revocation decisions. This function derives from the D.C. Revitalization Act and related District of Columbia legislation that abolished parole for the District of Columbia offenders and replaced it with supervised release.

Fourth, the Commission makes release decisions for transferred treaty offenders, United States citizens convicted of a crime in a foreign country who elect to serve their sentences in this country. If the foreign offense was committed before November 1 of 1987, that offender is eligible for parole. The Sentencing Reform Act provides that if a foreign offense is committed on or after November 1, 1987, the Commission determines a release date, taking into consideration the United States sentencing guidelines.

It should be emphasized that all of the functions currently carried out by the Commission will have to be carried out after November 1 of this year. There is no Federal agency authorized to carry out any of these functions of the Commission at this time, and there is no District of Columbia agency authorized to carry out any of these functions at this time.

Extending the life of the Commission is the best course of action to ensure the orderly administration of justice, to ensure that the public is adequately safeguarded by a commission whose primary mission is public safety.

I also urge Congress to act very quickly since the winding down mechanism of the Sentencing Reform Act of 1984 requires the Parole Commission to set release dates for parole-eligible Federal offenders still in prison and to do so in a sufficient time to give those offenders an opportunity to take an administrative appeal of their release date. That process takes about 90 days, which means that the deadline for acting on these cases of some 1,500 offenders is the end of this month. That will require a significant effort by the Commission and detract it from its ability to carry out the Commission's other public safety functions, and much of that effort may well be wasted if Congress decides that the life of the Commission should be extended.

In previous years Federal offenders citing the winding down mechanism have sought to compel the Commission to give them early release dates. Up until now, such litigation has not succeeded. The courts are very cognizant that enactment of legislation can be time consuming and that it is not uncommon for Congress to act very near a deadline.

This month one court, Congresswoman Norton mentioned, has indicated that the Commission must soon have to set a release date for a parole-eligible Federal offender under this winding down mechanism or provision. The decision came before a bill was introduced or even considered to extend the Commission's life or if there was any other public indication like this hearing that Congress was making progress in moving legislation to extend and address the life of the Commission.

In view of that decision, I urge Congress to move forward as promptly as possible to secure enactment of legislation that would extend the life of the Commission.

I thank you very much for the opportunity to be here today. I express my deep personal appreciation for the support we have had from Congress.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Reilly follows:]

PREPARED STATEMENT OF EDWARD F. REILLY, JR.



# Department of Justice

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## STATEMENT OF

**EDWARD F. REILLY, JR.  
COMMISSIONER  
UNITED STATES PAROLE COMMISSION  
UNITED STATES DEPARTMENT OF JUSTICE**

## BEFORE THE

**UNITED STATES HOUSE OF REPRESENTATIVES  
COMMITTEE ON THE JUDICIARY  
SUBCOMMITTEE ON CRIME, TERRORISM  
AND HOMELAND SECURITY**

## HEARING ENTITLED

**"REAUTHORIZATION OF THE U.S. PAROLE COMMISSION"**

## PRESENTED

**July 16, 2008**

Mr. Chairman, Members of the Subcommittee, I am pleased to be here today to testify about reauthorization of the United States Parole Commission (Parole Commission). I commend the Subcommittee for its interest in this matter, and I appreciate the opportunity to testify.

Some people may wonder why it is necessary to reauthorize the Parole Commission. After all, parole has been abolished for most federal offenders for more than 20 years. The matter of reauthorization raises three questions that must be answered. First, what does the Parole Commission do? Second, is it necessary to continue to carry out those functions? Third, is there an alternative to the Parole Commission for carrying out those functions?

Let me address the first question. In 1984, federal offenders were sentenced to indeterminate prison terms. The sentencing court imposed a maximum prison term on a convicted offender, and for most offenders the Parole Commission determined the offender's release date using its own decision-making guidelines. Offenders received hearings on a schedule set by statute to determine whether any change should be made in the release decision. The Commission set and enforced the conditions of parole under which the person was released to the community, and the Commission's enforcement authority included the power to revoke parole and return an offender to prison.

The Sentencing Reform Act of 1984 (the Act) dramatically altered the federal sentencing system. The Act established a determinate sentencing system in which the sentencing court set the prison time the offender would serve, guided by sentencing guidelines promulgated by the United States Sentencing Commission.<sup>1</sup> The Act abolished parole and replaced it with a new form of post-incarceration supervision called

supervised release. The abolition of parole took effect when the sentencing guidelines took effect, November 1, 1987.<sup>2</sup>

Because it was expected that the existing functions of the Parole Commission – granting parole, determining and modifying conditions of parole, and revoking parole – would apply to a limited and diminishing class of federal offenders sentenced under the old indeterminate sentencing laws, the Act provided for abolition of the Parole Commission effective November 1, 1992, five years after parole was eliminated.<sup>3</sup> For those parole-eligible federal offenders not released before the Parole Commission expired, the Act, in what has come to be known as the “winding-down” provision, required that the Parole Commission give each such offender a release date before going out of existence. However, the Act made no provision for periodic hearings for such offenders after the Commission went out of existence. The opportunity for periodic review and modification of a parole-release decision is a critical feature of federal parole law and any parole-release system.

The expected substantial decline in the number of parole-eligible federal offenders did not materialize. People continued to be convicted of offenses committed before the sentencing guidelines took effect, and many old-law offenders were not released on parole in the five-year transition period. For many old-law offenders, parole within that five-year period would have resulted in premature release to the community of persons who committed extremely serious crimes or were clearly dangerous. Further, Congress recognized that the winding-down mechanism raised serious constitutional issues by converting indeterminate terms into determinate terms. Offenders who remained incarcerated after the Commission went out of existence would be deprived of

periodic review of their cases. Their opportunity for an earlier release date would be eliminated, possibly raising ex post facto questions under the Constitution.<sup>4</sup>

Because a significant number of federal offenders were still under Commission jurisdiction, and in light of the constitutional questions surrounding the winding-down mechanism, Congress has extended the life of the Parole Commission several times.<sup>5</sup> The current closure date for the Parole Commission is November 1, 2008.

As Congress periodically extended the life of the Commission, Congress also gave the Commission new duties. The most significant new duties concerned offenders convicted of crimes in the District of Columbia Superior Court. The National Capital Revitalization and Self-Government Improvement Act of 1997<sup>6</sup>, together with related District of Columbia legislation, instituted reforms in the sentencing system for District of Columbia offenders that in many respects are similar to the reforms to federal law made by the Sentencing Reform Act of 1984.

As a result of those legislative efforts, the Parole Commission became the paroling authority for parole-eligible District of Columbia offenders.<sup>7</sup> Parole for District of Columbia offenders was abolished effective August 4, 2000, and replaced with supervised release.<sup>8</sup> The Parole Commission was given a role in the District of Columbia supervised release process. While the District of Columbia Superior Court sets the term of supervised release for an offender, the Parole Commission determines and enforces the conditions of supervised release. The Parole Commission's enforcement authority includes the power to revoke supervised release and send an offender back to prison.<sup>9</sup>

There were other additions to the Parole Commission's duties as well. Even before 1984, Congress had given the Parole Commission the duty of granting or denying

parole for United States citizens convicted of a crime in a foreign country who elected to return to the United States to complete sentence.<sup>10</sup> Congress subsequently determined that transferred offenders convicted of a foreign offense committed after October 31, 1987, should be treated as if sentenced in this country under the federal determinate sentencing system. The Anti-Drug Abuse Act of 1988, therefore, directed the Parole Commission to determine a release date and a period and conditions for supervised release as if the offender were convicted in the United States and taking into consideration the applicable sentencing guideline range as recommended by the Probation Service. *See* 18 U.S.C. § 4106A(b)(1).<sup>11</sup> This function is appropriately handled by an Executive Branch agency because, if a United States court were to set a release date after referring to the sentencing guidelines, it might appear to be a violation of transfer treaty provisions. The bilateral prisoner transfer treaty with Mexico, for example, gives the courts of the sentencing country the “exclusive jurisdiction over any proceedings, regardless of their form intended to challenge, modify or set aside sentences handed down by its courts.”

The Commission also performs parole-related functions for certain military and state offenders. When the Department of Defense transfers military service personnel convicted under the Uniform Code of Military Justice to the custody of the Federal Bureau of Prisons, the Parole Commission is responsible for making parole-release and revocation decisions for them.<sup>13</sup> Finally, the Act gave the Parole Commission decision-making authority over state offenders who are on state probation or parole and are transferred to federal authorities under the witness security program.<sup>14</sup>

In terms of work-load, most of the Commission's work involves District of Columbia offenders. Here is a break-down as of the end of fiscal year 2007 (September 30, 2007). The Parole Commission had jurisdiction over a total of some 13,600 offenders. Of those, nearly 70 percent were District of Columbia offenders. Of the District of Columbia offenders, about 38 percent were incarcerated and the remainder were under supervision in the community. Of the federal offenders, again about 38 percent were incarcerated and the remainder were in the community under supervision. In terms of the type of work we do, in fiscal year 2007 the Parole Commission conducted some 4,751 hearings, about 83 percent of which involved District of Columbia offenders.

The answer, then, to the first question – what does the Parole Commission do – is (1) make parole release and revocation decisions for parole-eligible federal offenders; (2) make parole release and revocation decisions for parole-eligible District of Columbia offenders; (3) set and enforce the conditions of supervised release for District of Columbia offenders; and (4) make release decisions for United States citizens convicted of a crime in another country who elect to return to the United States for service of sentence.

The answer to the second question, do those functions need to be carried out after October 31, 2008, is yes. There are still some 5,000 offenders in prison for whom parole release decisions must be made. There are some 5,800 District of Columbia offenders under supervision in the community for whom conditions of supervised release must be enforced, and that number is unlikely to diminish and probably will grow a bit.<sup>iv</sup> United States citizens convicted of crimes in foreign countries can be expected to continue to

want to come to this country to serve sentence. There has to be an entity to continue to carry out these functions.

That takes me to the third question – what are the options for carrying out these functions. There is presently no entity in any branch of government, whether the federal government or the District of Columbia government, which has statutory authority to perform the functions the Parole Commission currently performs. I believe that extending the life of the Parole Commission is the best course of action to ensure the orderly administration of justice and to ensure that the public is adequately safeguarded. I urge the Congress to extend the Parole Commission for a period no greater than three years. During this time, the Department of Justice will conduct analysis on whether the Commission in its present form is the best entity to perform the functions I have discussed.

Thank you again for the opportunity to testify. I will be pleased to answer any questions you may have.

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<sup>1</sup>Pub. L. No. 98-473, title II, ch. II, 98 Stat. 1987. An offender, however, can earn good-time credit of up to 15% of the sentence. See 18 U.S.C. § 3624.

<sup>2</sup>See Sentencing Reform Act of 1984, Pub. L. No. 98-473, title II, ch. II, § 218(a)(5), 98 Stat. 2027; Sentencing Reform Amendments Act of 1985, Pub. L. No. 99-217, 99 Stat. 1728.

<sup>3</sup>Sentencing Reform Act of 1984, Pub. L. No. 98-473, title II, ch. 2, § 235(b)(1)(A), 98 Stat. 2032. See Sen. Rep. No. 98-225, 98th Cong., 1st Sess. 189 (1983) (“Most of those individuals incarcerated under the old system will be released during the five-year period”).

<sup>4</sup>See H.R. Rep. No. 104-789, 104th Cong., 2d Sess. 3 (1996).

Constitutional requirements, specifically the ex post facto clause, necessitate the extension of the Commission, or the establishment of a similar entity authorized by statute to perform its functions. Otherwise those remaining “old law”

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offenders will file habeas corpus petitions, seeking release on the grounds that their right to be considered for parole had been unconstitutionally eliminated. If such petitions were successful, public safety may be jeopardized by the release of dangerous criminals.

*Id.*

<sup>5</sup>See Judicial Improvements Act of 1990, Pub. L. No. 101-650, § 316, 104 Stat. 5115; Parole Commission Phaseout Act of 1996, Pub. L. No. 104-232, 110 Stat. 3005; 21st Century Department of Justice Appropriations Authorization Act, Pub. L. No. 107-273, § 11017, 116 Stat. 1758 (2002); United States Parole Commission Extension and Sentencing Commission Authority Act of 2005, Pub. L. No. 109-76, § 2, 119 Stat. 2035.

<sup>6</sup>Pub. L. No. 105-33, title XI, 111 Stat. 712.

<sup>7</sup>See National Capital Revitalization and Self-Government Improvement Act of 1997, Pub. L. No. 105-33, § 11231, 111 Stat. 745; D.C. Code § 24-131(a)(1).

<sup>8</sup>See D.C. Code §§ 24-408(a-1), 24-403.01.

<sup>9</sup>See D.C. Code §§ 24-403.01(b)(6), 24-133(c)(2).

<sup>10</sup>See An Act to provide for the implementation of treaties for the transfer of offenders to or from foreign countries, Pub. L. No. 95-144, § 1, 91 Stat. 1216 (1977) (enacting 18 U.S.C. § 4106).

<sup>11</sup>Pub. L. No. 100-690, § 7101(a), 102 Stat. 4415 (enacting 18 U.S.C. § 4106A).

<sup>12</sup>See 10 U.S.C. § 858(a).

<sup>13</sup>See Sentencing Reform Act of 1984, Pub. L. No. 98-473, title II, ch. II, § 1208, 98 Stat. 2157 (enacting 18 U.S.C. § 3522).

<sup>14</sup>As of September 30, 2007, there were 3,558 District of Columbia offenders in prison who will begin terms of supervised release when their prison terms expire.

Mr. SCOTT. Thank you, Chairman Reilly.  
Mr. Crenshaw.

**TESTIMONY OF HORACE CRENSHAW, DISTRICT OF COLUMBIA  
PAROLEE, WASHINGTON, DC**

Mr. CRENSHAW. I was only notified about this hearing yesterday, so I don't have any prepared statement. Thanks to the Chairman, the Committee and especially Congresswoman Norton. Public speaking is not my forte.

Mr. GOHMERT. Just talk to us. Don't worry about public speaking. Just talk to us.

Mr. CRENSHAW. I am primarily going to focus on my interactions with the U.S. Parole Commission. I did a bad thing in 1980, a really bad thing, and was sentenced to 8 to 24 years. I was, under D.C. guidelines, sentenced to a District of Columbia facility. At the time there was overcrowding. So they were sending the excesses to the Federal system, which had the result of meaning I had to do more time because—not unable to be adjudicated under D.C. guidelines. The Federal Parole Board using different guidelines made us do more time. So instead of on my sentence probably being parole eligible after 6 years, I wasn't granted parole until I had done 12 years.

But after I made parole, my prison experience made me want to do the right thing, be a productive member of society. Also in prison I learned that I had an ability in art. I started painting and left with the impression that I could be good at this.

At the ripe old age of 42, I went to a university, Howard University, and pursued a degree in fine arts. While I was incarcerated I had been in several what they call gladiator camps but really the most difficult thing I had ever done was at 42 to go to class with 18- and 19-year-old students. I did really well, got my degree in 1995. My work is really good. I did a lot of portraits. Actually I have done some of your constituents. I did a portrait of Mr. Conyers, Ms. Kilpatrick.

For me I don't do success well. And as a result I started using drugs. That was my first interaction with the U.S. Parole Commission. During the process, speaking to other inmates who had been before the Parole Board, they said, with dirty urine you are definitely going back to prison. But you know, I thought I was the Parole Board poster child. I mean, a college degree, all these connections. And certainly they wouldn't send me back for one dirty urine, but they did. They gave me 18 months. And along with that, they took the 4 years of good time I had accrued while out on the street.

I got out of there again in 1997, stayed clean, got back on track, painting, doing the right thing, got back on track, stayed clean until 2008, at which time I got too fabulous again and started using the drugs. But this time when I saw the Parole Commission and I really thought they were going to send me back, they let me go into a drug program, which meant that I kept my job, I kept my contacts, and I was able to continue my painting business. And I am out here sitting before you all now.

Mr. SCOTT. Thank you.  
Mr. Muhlhausen.

**TESTIMONY OF DAVID B. MUHLHAUSEN, Ph.D., SENIOR POLICY ANALYST, CENTER FOR DATA ANALYSIS, THE HERITAGE FOUNDATION, WASHINGTON, DC**

Mr. MUHLHAUSEN. Thank you. My name is David Muhlhausen. I am a Senior Policy Analyst in the Center for Data Analysis at the Heritage Foundation. I thank Chairman Robert Scott, Ranking Member Louie Gohmert, and the rest of the Subcommittee for the opportunity to testify today on the reauthorization of the U.S. Parole Commission. The views I express in this testimony are my own and should not be construed as representing any official position of the Heritage Foundation.

The concern over high crime rates, a failed rehabilitative model of corrections led Federal and State governments to reform their correctional systems. In 1984, the U.S. Congress passed the Sentencing and Reform Act. The act made major changes to Federal sentencing policies by replacing indeterminate sentences with determinate sentences. The act also abolished parole. As a result of the implementation of determinate sentencing, offenders sentenced to Federal prison were required to serve at least 85 percent of their sentences. With good behavior, the offender could earn an early release with the remaining 15 percent of their original sentence.

The switch to determinate sentencing was intended to set in motion the eventual termination of the Parole Commission. While the planned phase out of the Commission has yet to take place, Congress has extended the life of the Commission several times. Not only has the life of the Commission been extended but its responsibilities have been extended as well.

Today the Parole Commission still oversees Federal old law cases that predate sentencing reform. More important, the Commission's—the majority of the Commission's workload concerns District of Columbia offenders. In fiscal year 2006 the Commission was responsible for thousands of District of Columbia offenders. However, the authorization of the Commission is set to expire on October 31 of this year.

While the role of the Commission is greatly diminished, the Commission still performs important functions that should continue. Therefore, reauthorization of the Commission is warranted. However, a return to the old indeterminate system is not justified. The continuing need for determinate sentencing can be justified for several reasons.

First, long prison terms for serious crimes are just. Indeterminate sentencing grant parole boards too much discretion in release decisions. This discretion all too often came at the expense of public safety. Determinate sentencing made incarceration terms more meaningful by ensuring that offenders actually serve most of their sentences. This change helped restore the credibility of the courts.

Second, incapacitation deterrence works. During the 1970's and 1980's, Federal, State and local officials recognized that the rehabilitative model of corrections did not work. Deterrence and incapacitation became the primary mission of corrections systems. Thus, Federal and State governments adopted such reforms as determinate sentencing, truth in sentencing and increased sentence lengths. Over the years several studies have demonstrated a link between increased incarceration and decreases in crime rates. After

controlling for socioeconomic factors that may influence crime rates, research indicates that incarceration reduces crime significantly. For example, Professor Joanna Shepherd of Clemson University found State truth-in-sentencing laws reduced violent crime rates across the Nation.

Third, determinate sentencing reduces disparity in sentencing by treating offenders equally. Indeterminate sentencing and parole decisions were criticized for placing too much discretionary power in the hands of judges and parole boards. The wide discretion given these decision makers led to the perception of an arbitrary sentencing system. Determinate sentencing helped reduce this problem.

While the Sentencing Reform Act greatly diminished the original responsibilities of the U.S. Parole Commission, the agency still performs important functions such as overseeing Federal old law cases and offenders from the District of Columbia. Congress should reauthorize the Commission, but avoid any temptation to revive indeterminate sentencing and parole at the expense of public safety.

Thank you.

[The prepared statement of Mr. Muhlhausen follows:]



### **CONGRESSIONAL TESTIMONY**

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**Statement of  
David B. Muhlhausen, Ph.D.  
Senior Policy Analyst  
Center for Data Analysis  
The Heritage Foundation**

**Before the Subcommittee on Crime, Terrorism, and  
Homeland Security of the United States House of Representative  
Committee on the Judiciary**

**Delivered July 16, 2008**

#### **Introduction**

My name is David Muhlhausen. I am Senior Policy Analyst in the Center for Data Analysis at The Heritage Foundation. I thank Chairman Robert C. Scott, Ranking Member Louie Gohmert, and the rest of the subcommittee for the opportunity to testify today regarding the reauthorization of the U.S. Parole Commission. The views I express in this testimony are my own and should not be construed as representing any official position of The Heritage Foundation.

#### **Determinate Sentencing Reform**

The concern over high crime rates and a failed rehabilitative model of corrections led federal and state governments to reform their correctional systems. In 1984, the U.S. Congress passed the Comprehensive Crime Control Act.<sup>1</sup> Included within the Comprehensive Crime Control Act was the Sentencing Reform Act. The Sentencing Reform Act made major changes to federal sentencing and parole policies by replacing indeterminate sentences with determinate sentences—definite terms of imprisonment. Early releases through parole were abolished and replaced with “supervised release.”

The wide and seemingly arbitrary indeterminate sentences of judges were replaced with determinate sentencing guidelines created by the U.S. Sentencing Commission. The new sentencing system took effect on November 1, 1987. Offenders sentenced for crimes committed on or after November 1, 1987, are administered under the determinate

sentencing system and are not eligible for parole.<sup>2</sup> For individuals convicted of offenses that occurred prior to November 1, 1987, their sentences are indeterminate. These pre-sentencing guideline cases or “old law” cases are eligible for parole. Once these old law cases run out, the original mission of the U.S. Parole Commission will have expired.

As a result of the implementation of determinate sentencing, offenders sentenced to prison were required to serve at least 85 percent of their sentences with possibility of early release for the remaining 15 percent of the sentence for good behavior.<sup>3</sup> This 85 percent requirement became known as “truth-in-sentencing.” Upon completion of at least 85 percent of their prison sentences, offenders may be returned to society on supervised release. Supervised release lasts from one to five years with the offender returning to the community under the supervision of Federal Probation Officers.<sup>4</sup> Before determinate sentencing, federal offenders only served, on average, 58 percent of their prison sentences.<sup>5</sup>

The switch to determinate sentencing was intended to set in motion the eventual termination of the U.S. Parole Commission. While the planned phase-out of the commission has yet to take place, Congress has extended the life of the commission several times.<sup>6</sup> Not only has the life of the commission been extended, but its responsibilities have been extended as well. Today, the U.S. Parole Commission has jurisdiction over the following:

- Old law cases,
- Transfer-treaty cases,
- State probationers and parolees in Federal Witness Protection Program,
- District of Columbia Code offenders, and
- Uniform Code of Military Justice offenders.<sup>7</sup>

The majority of the U.S. Parole Commission’s workload concerns District of Columbia offenders.<sup>8</sup> In fiscal year 2006, the commission was responsible for over 5,600 District of Columbia offenders being overseen in the community.<sup>9</sup> However, the authorization of the commission is set to expire on October 31, 2008. While the role of the commission has greatly diminished, the commission still performs important functions that must continue. Therefore, reauthorization of the U.S. Parole Commission is warranted. While reauthorization is recommended, a return to the old indeterminate system is not justified.

#### **Reasons to Support Determinate Sentencing**

Determinate sentencing can be justified for several reasons. First, long prison terms for serious crimes are just. Second, incapacitation and deterrence works. Third, determinate sentencing reduces disparity in sentencing by treating offenders equally.

*Longer prison terms for serious crimes are just.* Indeterminate sentencing granted parole boards too much discretion in release decisions. This discretion all too often came at the expense of public safety. Determinate sentencing made incarceration terms more meaningful by ensuring that offenders actually served most of their sentences. Determinate sentencing helped restore the credibility of courts by making sentencing

more uniform and ensuring that offenders actually served almost all of their original sentences.

*Incapacitation and deterrence works.* During the 1970s and 1980s, federal and state officials recognized that the rehabilitative model of corrections did not work. Correctional systems no longer focused on the ideal of rehabilitation at the expense of public safety. Rehabilitation programs were deemed ineffective.<sup>10</sup> Deterrence and incapacitation became the primary mission of correctional systems. Thus, federal and state governments adopted such reforms as determinate sentencing, “truth-in-sentencing,” and increased sentence lengths.

The switch to determinate sentencing and increased sentence lengths prevents crime through the effects of incapacitation and deterrence. The incapacitation effect reduces crime because offenders confined in prison from the rest of society are unable to harm innocent citizens. Criminals in prison simply cannot harm society.

In addition, determinate sentencing, combined with increased sentence lengths, produces greater levels of deterrence than occurred under the rehabilitative model. Deterrence theory supposes that increasing the risk of apprehension and punishment for crime deters individuals from committing crime. Nobel laureate Gary S. Becker's seminal 1968 study of the economics of crime recognized that individuals respond to the costs and benefits of committing crime.<sup>11</sup> In short, incentives matter.

Over the years, several studies have demonstrated a link between increased incarceration and decreases in crime rates. After controlling for socioeconomic factors that may influence crime rates, research based on trends in multiple jurisdictions (states and counties) over several years indicates that incarceration reduces crime significantly.<sup>12</sup>

Professor William Spelman of the University of Texas at Austin estimates that the drop in crime during the 1990s would have been 27 to 34 percent smaller without the prison buildup.<sup>13</sup> In another study, Professor Spelman analyzed the impact of incarceration in Texas counties from 1990 to 2000.<sup>14</sup> The most significant factor responsible for the drop in crime in Texas was the state's prison expansion.

Professor Joanna M. Shepherd of Clemson University found that truth-in-sentencing laws, which require violent felons to serve up to 85 percent of their sentences, reduced violent crime rates.<sup>15</sup> These laws reduced county murder rates per 100,000 residents by 1.2 incidents. Assaults and robberies were reduced by 44.8 and 39.6 incidents per 100,000 residents, respectively. Rapes and larcenies were reduced by 4.2 and 89.5 incidents per 100,000 residents.<sup>16</sup> Professor Steven Levitt of the University of Chicago found that for each prisoner released from prison, there was an increase of almost 15 reported and unreported crimes per year.<sup>17</sup>

Two studies by Thomas B. Marvell of Justec Research in Williamsburg, Virginia, and Carlisle E. Moody of the College of William and Mary support these findings of the effects of incarceration. In a 1994 study of 49 states' incarceration rates from 1971 to

1989, Marvell and Moody found that about 17 crimes (mainly property crimes) were averted for each additional prisoner put behind bars.<sup>18</sup> In a study using national data from 1930 to 1994, Marvell and Moody found that a 10 percent increase in the total prison population was associated with a 13 percent decrease in homicide, after controlling for socioeconomic factors.<sup>19</sup>

*Reducing Disparity.* Determinate sentencing reduces disparity by treating offenders equally. Indeterminate sentencing and parole decisions were criticized for placing too much discretionary power in the hands of judges and parole boards. The wide discretion given decision makers led to the perception of an arbitrary sentencing system that treated similar offenders in an all too often unequal manner.

#### **Conclusion**

The Sentencing Reform Act replaced the wide and seemingly arbitrary indeterminate sentences of federal judges with determinate sentences. While this reform greatly diminished the responsibilities of the U.S. Parole Commission, the agency still performs important functions, such as overseeing federal old law cases and offenders from the District of Columbia. Congress should reauthorize the commission, but avoid any temptation to revive indeterminate sentencing and parole at the expense of public safety.

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<sup>1</sup> For a historical review of the policy changes regarding sentencing and parole, see A. Keith Bottomley, "Parole in Transition: A Comparative Study of Origins, Developments, and Prospects for the 1990s," *Crime and Justice*, Vol. 12, (1990), pp. 319-374 and Joan Petersilia, "Parole and Prisoner Reentry in the United States," *Crime and Justice*, Vol. 26, Prisons (1999), pp. 479-529.

<sup>2</sup> U.S. Department of Justice, U.S. Parole Commission, *History of the Federal Parole System*, May 2003, p. 2, at <http://www.usdoj.gov/uspc/history.pdf> (July 14, 2008).

<sup>3</sup> Carol P. Getty, "Twenty Years of Federal Criminal Sentencing," *Journal of the Institute of Justice and International Studies*, Vol. 7 (2007), pp. 117-128.

<sup>4</sup> *Ibid.*

<sup>5</sup> U.S. Sentencing Commission, *Fifteen Years of Guidelines Sentencing: An Assessment of How Well the Federal Criminal Justice System is Achieving the Goals of Sentencing Reform*, November 2004.

<sup>6</sup> U.S. Department of Justice, U.S. Parole Commission, *History of the Federal Parole System*, May 2003, at <http://www.usdoj.gov/uspc/history.pdf> (July 14, 2008).

<sup>7</sup> *Ibid* and U.S. Department of Justice, United States Parole Commission, *Report of the United States Parole Commission: October 1, 2005-September 30, 2006*, undated document, at [http://www.usdoj.gov/uspc/commission\\_reports/annual-report-100105-093006.pdf](http://www.usdoj.gov/uspc/commission_reports/annual-report-100105-093006.pdf) (July 15, 2008).

<sup>8</sup> William E. Moschella, Assistant Attorney General, Office of Legislative Affairs, U.S. Department of Justice, letter to the Honorable J. Dennis Hastert, Speaker, U.S. House of Representatives, November 30, 2004.

<sup>9</sup> U.S. Department of Justice, United States Parole Commission, *Report of the United States Parole Commission: October 1, 2005-September 30, 2006*, undated document, p. iii, at [http://www.usdoj.gov/uspc/commission\\_reports/annual-report-100105-093006.pdf](http://www.usdoj.gov/uspc/commission_reports/annual-report-100105-093006.pdf) (July 15, 2008).

<sup>10</sup> Douglas Lipton, Robert Martinson, and Judith Wilks, *The Effectiveness of Correctional Treatments and What Works: A Survey of Treatment Evaluation Studies*. (New York: Praeger, 1975). In recent years, reviews of the scientific literature indicate that a few correctional programs appear to reduce recidivism for at least some offenders. See Doris Layton MacKenzie, "Reducing the Criminal Activities of Known Offenders and Delinquents: Crime Prevention in the Courts and Corrections" in *Evidence-Based Crime Prevention*, eds. Lawrence W. Sherman, David P. Farrington, Brandon C. Welsh, and Doris Layton MacKenzie, (London: Routledge, 2002), pp. 330-404. However the majority of rehabilitative programs have little to no effect on recidivism. See David Farabee, *Rethinking Rehabilitation: Why Can't We Reform Our Criminals?* (Washington, D.C.: The AEI Press, 2005).

<sup>11</sup> Gary S. Becker, "Crime and Punishment: An Economic Approach," *Journal of Political Economy*, Vol. 76, No. 2 (1968), pp. 169-217.

<sup>12</sup> Steven D. Levitt, "The Effect of Prison Population Size on Crime Rates: Evidence from Prison Overcrowding Litigation," *The Quarterly Journal of Economics*, May 1996, pp. 319-351; Thomas B. Marvell and Carlisle E. Moody, Jr., "Prison Population Growth and Crime Reduction," *Journal of Quantitative Criminology*, Vol. 10, No. 2 (1994), pp. 109-140; Thomas B. Marvell and Carlisle E. Moody, Jr., "The Impact of Prison Growth on Homicide," *Homicide Studies*, Vol. 1, No. 3 (1997), pp. 205-233; Joanna M. Shepherd, "Police, Prosecutors, Criminals, and Determinate Sentencing: The Truth About Truth-In-Sentencing Laws," *Journal of Law and Economics*, Vol. 45 (October 2001), pp. 509-534; William Spelman, "The Limited Importance of Prison Expansion" in *The Crime Drop in America*, eds. Alfred Blumstein and Joel Wallman, (Cambridge: Cambridge University Press, 2000), pp. 97-129; William Spelman, "Jobs or Jails? The Crime Drop in Texas," *Journal of Policy Analysis and Management*, Vol. 24, No. 1 (2005), pp. 133-165.

<sup>13</sup> Spelman, "The Limited Importance of Prison Expansion," pp. 123 and 125 (footnote 8).

<sup>14</sup> Spelman, "Jobs or Jails?: The Crime Drop in Texas."

<sup>15</sup> Shepherd, "Police, Prosecutors, Criminals, and Determinate Sentencing: The Truth About Truth-In-Sentencing Laws."

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<sup>16</sup> *Ibid.*

<sup>17</sup> Levitt, "The Effect of Prison Population Size on Crime Rates: Evidence from Prison Overcrowding Litigation."

<sup>18</sup> Marvell and Moody, "Prison Population Growth and Crime Reduction."

<sup>19</sup> Marvell and Moody, "The Impact of Prison Growth on Homicide."

Mr. SCOTT. Thank you very much.

We will now have questions for the panel. And I will begin by recognizing myself for 5 minutes. Mr. Muhlhausen, your testimony seems to perpetuate a misunderstanding about determinate sentences as, quote, increasing sentences. Those are two different things.

Let me ask you a question of whether it would be better to have indeterminate sentencing of a few getting out in one and a half years, most getting out in 3 and a few serving 10 years or everybody get out in 3 years?

Mr. MUHLHAUSEN. Well, I think it depends on the nature of the crime. I think that one of the things that happened was that the crime the person was convicted of, if they are sent to prison, we are saying that this person needs to be incarcerated, it should be for a set term, something that is meaningful. In combination with other reforms, it helped lead to increased sentences.

Mr. SCOTT. Would it be better to sentence a person to one and a half years to 10 years and they got out when they are ready or everybody serves 3 years, ready or not, here they come?

Mr. MUHLHAUSEN. It depends on the sentence, what the crime was.

Mr. SCOTT. What is the sentence?

Mr. MUHLHAUSEN. It would depend on what the crime was. I would say if it was a serious offense, I would say the safe bet is for the longer sentence that is appropriate.

Mr. SCOTT. 3 years.

Mr. MUHLHAUSEN. Yes. But it depends.

Mr. SCOTT. As opposed to possibly serving 10?

Mr. MUHLHAUSEN. It depends on the individual. It depends on what the crime was.

Mr. SCOTT. When is it best to determine when it depends?

Mr. MUHLHAUSEN. Well, I think—

Mr. SCOTT. A judge, if you are talking determinate sentences, it is not whether they serve 3 or they serve 10. The question is whether it is determinate or indeterminate. Okay. Here we go. A year and a half to 10 years, average of 3, where some, the most—the worst will actually pull all 10? Or everybody out in 3 years, ready or not, here they come?

Mr. MUHLHAUSEN. If you can ensure that the serious offenders stayed in and deserve—I would prefer the range.

Mr. SCOTT. Under the liberal deceptive parole system, as it has been disparaged, some actually pulled all 10 years, couldn't get out, couldn't make parole. Some got out early. A decision was made when it was time for them to get out. And some were determined not ready. They were held all 10 years. Now the question again is would it be better for all of them to get 3 years, ready or not, here they come? Or some getting out early and some appropriately held three times longer?

Mr. MUHLHAUSEN. If we had a system where we had confidence in the decisions made, I would go with the option you are leaning towards.

Mr. SCOTT. One and a half to 10?

Mr. MUHLHAUSEN. It would have to be that we have confidence in the system and it works.

Mr. SCOTT. Okay. But you would prefer 3?

Mr. MUHLHAUSEN. If we couldn't trust the judges and the Parole Board, yes.

Mr. SCOTT. Well, that is the choice we have to make as legislators, whether or not everybody gets out in 3 and those who could have stayed all 10 get out in the 3 with the rest of them.

Mr. MUHLHAUSEN. One of the things I think that—

Mr. SCOTT. Suppose you had Willie Horton and somebody who rehabilitated, shows no likelihood of recidivism in the objective judgment of the Parole Board, would you hold—would you want them all out on the same date? Or would you like the opportunity to hold Willie Horton and Charles Manson the whole 10 and not get out in 3 like everybody else?

Mr. MUHLHAUSEN. Well, I would say that any system that sentenced Willie Horton and the other person to only 3 years would be terribly unjust. They should serve longer.

Mr. SCOTT. This is the kind of—you can't catch up with it kind of thing that determinate sentence tries to suggest. You are trying to set—

Mr. MUHLHAUSEN. Well, if you had murderers who were sentenced for 3 years only, that wouldn't make sense.

Mr. SCOTT. Well, if you want to compare that to 10, the comparison isn't one and a half to 10 whether people serve 3 or 10. If you want 10 to be the average, then you are talking about 5 to maybe 30. Now, let's go—if you want them to serve 10 years, average 10 years, would it make more sense to let some out in 5 and some out in 30 or everybody out in 10 years, ready or not, here they come?

Mr. MUHLHAUSEN. I would be opposed to both instances because both sentences are too short for murder.

Mr. SCOTT. Okay. Let's go 30 years. Would it make more sense for everybody to get out in 30 years or some to get out in 10 and some to get out in 50?

Mr. MUHLHAUSEN. I would prefer 30 years.

Mr. SCOTT. Everybody—

Mr. MUHLHAUSEN. People convicted of murder, yes.

Mr. SCOTT. So Willie Horton gets out the same time everybody else gets out. You can't hold—the thing about this determinate sentence and the kind of misleading thing here is you don't want to let anybody out early. That is the half truth in truth in sentencing. The whole truth is, you can't hold people longer either. And you would give up the opportunity to hold the worst prisoners much longer so that everybody gets out on the average?

When you talk about determinate sentencing, why is Willie Horton and Charles Manson and that bunch, why are they smiling? They are smiling because they get out in the same average time as everybody else. You cannot hold them longer under determinate sentence because when the average comes, they get out with the rest of them.

Now, my question again is, if you are talking about a sentence one and a half to 10, average 3, would it make more sense to give everybody the 3 or give Mr. Reilly the opportunity to tell some of them, no, you are not ready in 3, we are going to hold you to 10?

Mr. MUHLHAUSEN. I would prefer to have a longer sentence either way.

Mr. SCOTT. Well, I didn't—well, see, you are trying to make—you are trying to use determinate sentence to create the longer sentence. Once you have figured out what the average is, my question is, would it make sense to be able to hold some much longer than average or not?

Mr. MUHLHAUSEN. If you had faith in the system, yes.

Mr. SCOTT. It would make sense to be able to hold some longer than average?

Mr. MUHLHAUSEN. Yes.

Mr. SCOTT. Okay. That is that liberal deceptive parole system you are talking about.

Now, Mr. Reilly, when you make the decision to set a parole date, when is that decision made?

Mr. REILLY. When we make the decision, it is usually after the person has served, depending upon their sentence that they are given, and they are given a hearing. A professional examiner conducts that hearing after review by analysts of the conduct of the individual in the institution, how they have progressed, what they have done while they have been in the institution, and a recommendation is then made to the full Commission.

Mr. SCOTT. Would you consider whether or not they have a parole plan; that is to say, they have something to do and somewhere to go?

Mr. REILLY. Most definitely. It is a major part of it.

Mr. SCOTT. And does it make sense to you that if you have two people before you, one has a plan where they have a job lined up with somewhere to go and a support system and another person that chose no rehabilitation at all, does it make sense to let them out on the same day under determinate sentences? Or does it make more sense for you to use your common sense and recognize the one is ready to go and the other one isn't?

Mr. REILLY. I would like to think that over the course of the existence of the Parole Commission that is the—since the Sentencing Reform Act, we have been using common sense because we have been very fortunate that we haven't had any major catastrophes with those folks that we have had to review.

But with regard to the discussion here, because I see that we are talking obviously about determinate versus indeterminate, our concern of course is dealing with those folks who went in under the indeterminate sentence structure. And those are the people we are very critically concerned about at this point because of the fact that if the Commission does go out of business, obviously they will not have due process and the court will end up giving them due process. It won't be the Commission, and the courts will make that decision as to what happens to them.

So I think the environment we are in right now is one that—where our concern is the critical nature of moving forward in terms of doing something with this legislation. I am delighted to say that even Mr. Vassar and I attended for 2 days along with representatives of the Department of Justice a symposium; since I do serve on the U.S. Sentencing Commission as an ex officio member by virtue of being chair of the Parole Board, or Parole Commission, we did have the opportunity to listen to 2 days of extensive testimony from a variety of folks from all walks of life and academicians and

so on, calling to attention the fact that there needs to be a look probably at the overall criminal justice system in terms of the future, where we are going and so on, alternatives, if you will, that could be pursued, which many of our States are doing. Kansas is one of the leaders, and I am delighted to say I come from Kansas.

Mr. SCOTT. And I think your point is that this discussion might better take place on another day. Let's get this legislation passed, is that what I am hearing?

Mr. REILLY. I think that is where I am going, Congressman. I think it is another debate for another day, really. And I certainly welcome the opportunity.

Mr. SCOTT. Your point is well taken and we are going to try to have that debate.

Mr. Gohmert.

Mr. GOHMERT. Thank you. Well, let me ask Dr. Muhlhausen, one of the motivations for determinate sentencing was to alleviate disparities in sentencing across the country. That had been a problem. But especially disparate sentences that disadvantaged minorities, and I was wondering from the research you have done, has the determinate sentencing structure worked to address those disparities?

Mr. MUHLHAUSEN. Yes. I believe especially on the State level what you will see is that before sentencing guidelines were implemented on the State level you will find wide disparities in how people were sentenced for similar crimes. Then when—especially in Pennsylvania, for instance, the sentences came much more uniform, where people who committed the same crime were having very similar sentences. And so no longer you had so much of a disparity that could be drawn upon by background characteristics in individuals. So I would say that one of the benefits of the sentencing guidelines is it helps reduces disparity.

Now there is always questions whether or not that person should be sentenced to that length of time or not. But you are going to have more even sentences across the board.

Mr. GOHMERT. Well, thank you. And I wanted to ask Chairman Reilly, do you have any estimate for when Federal parolees will no longer be in the criminal justice system?

Mr. REILLY. That is an excellent question, Congressman. We don't have a projection that has been run out. We have done that in the past. It hasn't proven so far to be accurate in terms of the numbers because we are still dealing, as we said earlier, 1,581 that are incarcerated in the old law Federal classification and 2,576 who are out under supervision. Obviously people violate. They come back into the system.

It is very hard to make a sound projection. One time we did look out to about 2010 and thought, as we did 5 or 10 years ago, that there was a way to start to really phase down even more dramatically the Commission. We are down to 72 staff. When I came originally we had 145. Our budget has remained fairly flat-lined all the way along so we have basically stayed in the status quo position. But that is something we could work on and try to provide the Committee in terms of giving these long-range projections and plug in the fact we can't say this is ironclad because of people reviolating and so on.

Mr. GOHMERT. I think it would be very helpful if you could. Our colleague, Ms. Holmes Norton, brought up, you know, that we keep having to do this over and over again. And it would be really helpful to know what we are looking at in terms of length of time that it would be needed.

Mr. SCOTT. If the gentleman will yield, Mr. Reilly, did you give an idea of how long you would like us to reauthorize this for?

Mr. REILLY. Well, the recommendation for reauthorization is for 3 years. That is the recommendation that the Department has made, and we support that. We feel that in that period of time they are suggesting to us that there should be another look at this whole situation in terms of criminal justice issues, and we support that.

Mr. SCOTT. Thank you.

Mr. GOHMERT. Then reclaiming my time, Mr. Crenshaw, you had mentioned that you violated earlier and were sent back to prison for use of drugs, and then it happened again. What drug was that?

Mr. CRENSHAW. Heroin.

Mr. GOHMERT. Heroin. At what point did you obtain a heroin problem? Was that before you went to prison the first time?

Mr. CRENSHAW. Yes, sir.

Mr. GOHMERT. I am curious. Did you have any exposure, any opportunities to have heroin while you were in prison?

Mr. CRENSHAW. Yeah, there was drugs available.

Mr. SCOTT. The gentleman has a right against self-incrimination.

Mr. CRENSHAW. There were drugs in prison.

Mr. GOHMERT. When he was in the first time, I am sure limitations has long since gone on that, from what he said, so he would be way beyond that. But when we are dealing with the system and we are dealing with people—

Mr. SCOTT. He is not represented by counsel.

Mr. GOHMERT. Well, I wasn't asking a question because of the timeline we are talking about here that would have—Mr. Crenshaw, I am not trying to get you in trouble, but how long ago was it that you first were released from prison?

Mr. CRENSHAW. First in '92.

Mr. GOHMERT. In '92. So we are talking 16 years ago. I don't know of anybody, D.C. or otherwise, that would allow prosecution for 16 years or more ago. But it does help me. I am curious what people deal with in prison. Are we helping them to rehabilitate in prison, and are we not helping them?

Then my next question was going to be, was there any drug treatment or drug rehab available during that first time you were in prison?

Mr. CRENSHAW. No.

Mr. GOHMERT. None at all. Not even a 12-step program?

Mr. CRENSHAW. Not in the institutions where I was.

Mr. GOHMERT. Not in institutions at all where you were. How about the second time you went back in? Was there any type of 12-step or any other program?

Mr. CRENSHAW. When I went back the second time, Occoquan had started the first drug program in a D.C. facility and I was a part of it. The first program.

Mr. GOHMERT. What kind of program was it? Was it a 12-step program? Do you understand what I am talking about, a 12-step program?

Mr. CRENSHAW. I do. I don't know that they designated it by any particular name. It wasn't a 12-step program though.

Mr. GOHMERT. Just a drug rehabilitation type program, that what while you were incarcerated the second time?

Mr. CRENSHAW. Yes.

Mr. GOHMERT. Was it helpful at all? I know you re-offended later from what you said, but obviously—

Mr. CRENSHAW. I think it was.

Mr. GOHMERT. Would you consider yourself a drug addict?

Mr. CRENSHAW. Yes.

Mr. GOHMERT. Well, I don't think that is an unfair question. From the thousands of people I dealt with, it seems like, well, in the 12-step program, the first step is to admit there is an addiction, and then if there is, then you know you are going to be dealing with it every day for the rest of your life. So by my asking about was the program helpful, obviously you re-offended later, but that is a battle that gets fought every day, I am sure. Correct?

Mr. CRENSHAW. Yes, it is.

Mr. GOHMERT. If I can just ask one more question. Since you have been released, you said you weren't committed back this time, but that you have gotten rehab assistance now. What kind of program is that?

Mr. CRENSHAW. It is methadone maintenance.

Mr. GOHMERT. It is methadone. Is that proving helpful to you, do you feel like?

Mr. CRENSHAW. Yes.

Mr. GOHMERT. Do you recommend that program for others similarly situated?

Mr. CRENSHAW. I think people should be given options.

Mr. GOHMERT. What I am asking, I would like to have our money spent on programs that work.

Mr. CRENSHAW. Well, it works for me, and I know others that it has worked for, but I know some who it didn't work for.

Mr. GOHMERT. I see. Okay.

Thank you, Chairman.

Mr. SCOTT. Our presence has been requested downstairs. If we show up we will have a quorum.

The gentlelady from Texas.

Ms. JACKSON LEE. I won't ask any questions. If the gentleman would yield to me just for a moment, I just wanted to put a couple points on the record, and then I will yield back. I wanted to thank the witnesses. I thank the Chairman and Ranking Member for this hearing.

My point is, I was given a brief summary of Congresswoman Norton's testimony, and I certainly want to cooperate and collaborate with the system that is being utilized in the District of Columbia and is being helpful. However, I do want to get from Chairman Reilly, if I could, sort of a breakdown of the service and how the parole officers are functioning.

My concern is that we need trained parole officers that know how to treat different classes of clients, and if an individual comes out,

is gainfully employed and is doing well, the parole person should make sure that that is gainful employment, but not stigmatize the person as to being involved in criminal activities just because they are a success story. We are finding issues like this around the country.

The second point is, I have an early release initiative, H.R. 261, and I frankly believe we should engage in some form of review of early release. I don't know if the Parole Commission could be tasked with that, the viability of an early release program, because, of course, we don't have parole. I think that that would be very important.

So, I would hope that I could get a response, Chairman, in writing, about what kind of training goes on to the existing parole staff, parole officers, if you will, how do they assess parolees, how do they assess a success, and how do they refrain from condemning a person who is actually doing well on their own.

I would appreciate your consideration of those questions.

Mr. SCOTT. Thank you.

I want to thank our witnesses for their testimony. We apologize. We went way over because of the confusion on the floor and we couldn't begin in time.

Without objection, the hearing record will be left open for 1 week for the submission of additional materials.

Without objection, the Subcommittee is adjourned.

[Whereupon, at 6 p.m., the Subcommittee was adjourned.]



## A P P E N D I X

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### MATERIAL SUBMITTED FOR THE HEARING RECORD

**PREPARED STATEMENT OF THE HONORABLE JOHN CONYERS, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN, AND CHAIRMAN, COMMITTEE ON THE JUDICIARY**

We have several distinguished witnesses appearing before the Crime Subcommittee to discuss the current and future role of the United States Parole Commission.

I especially want to thank Representative Holmes Norton for taking time out of her schedule to testify and for her dedicated service to the District of Columbia. If an issue in Congress affects the citizens of the District of Columbia, Rep. Holmes Norton is always there to ensure that the best interests of the city are considered.

Today's hearing concerns one of those issues, namely, the reauthorization of the United States Parole Commission. I am pleased to have introduced—along with Ranking Member Smith and Representatives Scott, Gohmert and Holmes Norton—legislation that would once again extend the Parole Commission's authorization for another three years.

This will be the fifth time since the elimination of federal parole in 1987 that the Parole Commission has been reauthorized. I know Representative Holmes Norton has supported extending the Parole Commission permanently and I hope she will discuss her position on permanent extension.

In the more than 20 years since the elimination of federal parole, Congress has debated whether or not to phase-out the Parole Commission. Currently, the Commission has jurisdiction over all decisions regarding parole release for D.C. prisoners and decisions on mandatory release supervision and revocation for all persons serving D.C. felony sentences.

The Commission also has jurisdiction over federal and foreign transfer treaty offenders convicted before November 1987, some military code offenders and state defendants in the U.S. Marshals Service Witness Protection Program. According to the Parole Commission, at least 7,500 people will fall into one of these categories by 2010. This is why Congress, in the 1996 extension of the Parole Commission, finally recognized that there would be a need for the Commission through 2002 and beyond.

As part of this hearing, I would like to make three brief points regarding the extension of the Parole Commission. First, I hope we can discuss whether it makes sense to permanently extend the parole commission in light of increasing numbers of D.C. offenders under supervised release who are under the jurisdiction of the Parole Commission.

Second, I would like to hear more about whether parole has been successful in helping individuals who have often served long sentences in prison to reenter back into society.

Third, I would like to know whether the U.S. Parole Commission is the appropriate agency for to make decisions about D.C. offenders.

Again, I thank each of the witnesses for agreeing to appear before the Subcommittee today and I look forward to hearing your thoughts about the future of the Parole Commission.

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**PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS, AND MEMBER, SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY**

Mr. Chairman, thank you for holding today's important hearing on the "Reauthorization of the U.S. Parole Commission." I support this bill and I urge my colleagues to do likewise. This bill is necessary.

The United States Parole Commission's (Parole Commission) authority will expire October 31, 2008. The House legislation to extend the Parole Commission authority for three more years will be introduced prior to this hearing. The purpose of the hearing is to examine the current and anticipated future role and operations of the Parole Commission in light of the elimination of federal parole.

The Sentencing Reform Act (SRA) provisions of the Comprehensive Crime Control Act of 1984 created the United States Sentencing Commission which is responsible for establishing sentencing guidelines for the federal courts and a regime of determinate sentences. Under the SRA, defendants sentenced for federal offenses committed on or after November 1, 1987 serve determinate terms under the sentencing guidelines and are not eligible for parole consideration. In addition, the SRA provided for the elimination of the Parole Commission on November 1, 1992, five years after the sentencing guidelines took effect. This phase-out provision of the SRA did not adequately take into account the number of persons sentenced prior to November 1, 1987 who would not complete their sentences by November 1992. In order to avoid serious *ex post facto* constitutional issues by eliminating or reducing parole eligibility for pre-1987 defendants, the *Judicial Improvements Act of 1990* extended the life of the Parole Commission until November 1, 1997.

The authorization of the Parole Commission was again extended for five more years under the *Parole Commission Phaseout Act of 1996 (1996 Act)*. The 1996 Act authorized the continuation of the Parole Commission until November 1, 2002, but Congress also recognized that some form of a parole function would be necessary beyond 2002.

In 1997, the National Capital Revitalization and Self-Government Improvement Act of 1997 (1997 Act) gave the Parole Commission a number of additional responsibilities. The 1997 Act provided for the elimination of the District of Columbia Board of Parole and the transfer of its responsibilities to the U.S. Parole Commission. Also, the 1997 Act required the District of Columbia to move to a determinate sentencing system (at least for some offenses) and provided for terms of supervised release to follow the imposed determinate sentences. Under the 1997 Act, the Parole Commission was given continuing responsibility for supervision and revocation decisions of D.C. Code offenders who are given terms of supervised release under the new determinate sentencing system.

In August 1998, the Parole Commission assumed jurisdiction over all decisions regarding parole release for prisoners confined for D.C. Code felony sentences as well as mandatory release supervision and revocation decisions for all persons serving felony sentences under the D.C. Code. In August 2000, the District of Columbia enacted a determinate sentencing system for all offenses "committed on or after August 5, 2000." These offenders receive a definite term of imprisonment followed in most cases by a period of supervised release which may continue for a number of years. During the period of supervised release, the offender's behavior is closely monitored under conditions determined by the Parole Commission that are designed to protect public safety and maximize the likelihood of successful reentry into society.

The 21st Century Department of Justice Appropriations Authorization Act of 2002 (2002 Act) extended the life of the Parole Commission until November 1, 2005. The 2002 Act also requested a study be completed before the expiration of the Act examining whether responsibility for District of Columbia offenders sentenced to supervised release should remain with the Parole Commission or be transferred to another agency. In 2004, DOJ completed the study requested in the 2002 Act and concluded that the Parole Commission should continue to carry out its responsibilities regarding supervised release of District of Columbia offenders. The most recent extension in the 109th Congress (S.1368/HR 3020) passed by unanimous consent in the Senate and on suspension in the House with the support of the Chairmen and Ranking Members of both Senate and House Judiciary Committees.

Congress has also given the Parole Commission additional responsibilities, including the responsibility for making prison-term decisions in foreign transfer treaty cases for offenses committed on or after November 1, 1987 and jurisdiction over state defendants who participate in the U.S. Marshals Service Witness Protection Program. In addition, the Parole Commission has ongoing responsibility for the remaining "old-law" federal offenders in prison or under supervision who were sentenced before November 1, 1987 and military code offenders serving sentences in Bureau of Prisons institutions.

The Department of Justice (DOJ) estimates by 2010 the parole population will be:

1. Federal Offenders: 881 (decreasing)
2. DC Offenders: 3,471 (decreasing)
3. DC Supervised Release Offenders: 3, 218 (increasing)

Chairman Conyers and Ranking Member Smith are the lead sponsors of the legislation and Reps. Scott, Gohmert and Holmes Norton have agreed to be original co-sponsors. Last week, Sens. Leahy and Specter introduced a companion bill in the Senate to extend the Parole Commission for three years. The Senate bill was hotlined for floor action upon its introduction.

As the expiration of the Parole Commission authorization draws near, DOJ is concerned that federal inmates who were sentenced prior to 1984 will begin to file motions for release under § 235(b)(3) of the Sentencing Reform Act (SRA) should the extension not become law before the current one expires. This section of the SRA requires that in the event the authorization of the Commission lapses, release dates for inmates sentenced before 1984 must be set consistent with 18 U.S.C. § 4206 (repealed) three to six months prior to expiration of the Commission.

Initially, Rep. Holmes Norton requested an indefinite extension of the Parole Commission's authority. Ultimately, Ms. Holmes Norton agreed to co-sponsor the House legislation with a three year extension, because Senate co-sponsors of the companion legislation were not willing to extend the reauthorization beyond 2011.

DOJ has proposed that during the next three year extension of the Parole Commission, an internal working group examine the future of the Commission. This working group would examine whether any changes to the Commission are necessary to reflect its decreasing federal parole responsibilities and evolving supervised release responsibilities. These changes may include transferring all or some of the Commission's functions to an entity or entities inside or outside of the Department of Justice.

A letter dated May 22, 2008 was sent to DOJ from the Federal Court of Appeals for the Third Circuit requesting information regarding Congress' intent to extend the Commission. DOJ anticipates this will be the first of a number of such requests and are concerned that because reauthorization legislation has not been passed that it may create the perception that the Parole Commission will not be reauthorized.

There will be two witness panels for this hearing. Rep. Eleanor Holmes Norton will testify on the first panel. The Honorable Edward Reilly, Jr., Chairman of the Parole Commission will testify on the second panel along with Kenneth Linn, J.D., LL.M., Chairman of the Federal Chapter of Citizens United for Rehabilitation of Errants (CURE) and David B. Muhlhausen, Ph.D., Senior Policy Analyst for the Heritage Foundation's Center for Data Analysis.

I look forward to hearing the testimony of today's witnesses. Thank you, and I yield the balance of my time.

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**PREPARED STATEMENT OF THE HONORABLE LOUIE GOHMERT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS, AND RANKING MEMBER, SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY**

The subject of today's hearing is the reauthorization of the United States Parole Commission. The Commission is an independent agency within the Department of Justice that has the responsibility of supervising federal offenders that are eligible for parole.

The Parole Commission also has jurisdiction over two separate groups of D.C. Code offenders, those convicted of D.C. offenses for which they can be paroled and those convicted under current DC law, under which they cannot be paroled.

Today, the great majority of the U.S. Parole Commission's workload concerns the District of Columbia offenders. That is because the group of offenders that the Commission was originally intended to supervise—federal offenders that are eligible for parole—are a small category of prisoners getting smaller every day.

This decrease in the number of parole-eligible federal offenders is the result of a decision by Congress to end indeterminate sentencing, and therefore federal parole, with the passage of the Sentencing Reform Act or SRA of 1984.

The SRA created a system of "supervised release" that requires an offender to receive a determinate sentence of incarceration—generally a term of months or years—followed by a period of release into the community under the close supervision of court officers. Congress passed this law to address concerns of sentencing disparities across the country. The SRA had the goal of imposing similar sentences for similar crimes nationwide.

As a result of this law, the wide and seemingly arbitrary indeterminate sentences of judges were replaced with determinate sentences mandated by strong guidelines created by the U.S. Sentencing Commission.

In passing the SRA, Congress also had the goal of correcting the failure of the federal corrections system to lower high crime rates.

This new federal sentencing arrangement has been an unquestioned success. Determinate sentencing made incarceration terms more meaningful by ensuring that offenders actually served most of their sentences. Determinate sentencing also helped to restore the credibility of courts by making sentencing more uniform and ensuring that offenders actually served almost all of their original sentences.

Over the last 25 years, the national crime rate has dropped. This decrease in crime can be attributed to determinate sentencing, which keeps violent criminals in prison and off the streets.

In an effort to lower local crime rates, the District of Columbia followed the federal example, by abolishing parole and establishing a system of supervised release in 2000. Under the D.C. system, the D.C. Superior Court imposes a term of supervised release, but the Parole Commission imposes the conditions of supervised release and is responsible for enforcing those conditions.

Like the population of federal offenders eligible for parole, the parole-eligible D.C. offender population is declining over time, although at a slower rate than federal offenders. It has been estimated that it will take 25 years or more before the D.C. parole-eligible offender population disappears. Because all incoming offenders are now sentenced under the new arrangement, the D.C. supervised release offender population is increasing over time.

By 2010, the Department of Justice estimates that there will be less than 900 parole-eligible federal offenders, with their numbers decreasing each year. The Department estimates that there will be around 3400 D.C. parole-eligible offenders, whose numbers will also decrease each year. It also estimates that there will be more than 3200 D.C. offenders sentenced under the newer supervised release system by that time, with those numbers increasing each year.

The Commission's authority to supervise these offenders will expire on October 31, 2008. The Department of Justice has requested that Congress introduce legislation to extend the Commission for another three years. In response to that request, Chairman Conyers plans to introduce the Parole Commission Extension Act of 2008. Chairman Scott, Ranking Member Smith, and I will co-sponsor this bill.

The Department of Justice has indicated that it will evaluate the future of the Commission during the three year period when the Commission is extended. The Department will review whether any changes to the Commission are necessary to reflect its decreasing federal parole responsibilities and evolving supervised release responsibilities for the District of Columbia. These changes may include transferring all or some of the Commission's functions to an entity or entities inside or outside of the Department of Justice.

I expect the Department to share the results of this review and look forward to receiving them. This review will be beneficial to Congress and will help Members make an informed decision about the future status of the U.S. Parole Commission.

I thank the witnesses for joining us today and I look forward to hearing their testimony. I yield back the balance of my time.

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**TO: House Judiciary Subcommittee on Crime, Terrorism and Homeland Security**

**For: Hearing on Wednesday, July 16, 2008, on Reauthorization of the United States Parole Commission**

Dear Honorable Members of the Subcommittee:

I am writing to urge you to deny reauthorization of the U.S. Parole Commission (USPC) who currently oversees federal inmates sentenced prior to November 1987, commonly known as "old law" inmates.

My partner is an old-law offender who committed his crime in 1987 and has been incarcerated ever since. I am highly involved, along with a legal team, in filing a petition of habeas corpus on his behalf and have accumulated much first-hand experience regarding the ineptitude, unfairness, and bureaucracy of the USPC.

Over the years we have repeatedly been denied Freedom of Information Act requests. Transcripts (both taped and written) are not provided by the Commission, and have been "lost" many times. Notice of Action decisions flagrantly violate the rules and procedures that the Parole Commission is bound to follow, resulting in appeals that are subsequently denied.

Regardless of the inherent bureaucracy of any government institution, I believe that the USPC takes incompetence to a new level. For many old-law offenders there is no choice except to file a habeas. It is time-consuming, expensive, and impossible for many inmates who have neither the financial means nor support to do so. This clogs the already overburdened justice system because it is literally the only means of rectifying the Parole Commission's actions. Sadly, even those inmates who deserve to have their cases remedied find it easier to remain incarcerated than to jump through the hoops that keep them imprisoned unfairly.

Over the course of my partner's last 5 hearings, I have witnessed hearing examiners repeatedly request that he either be released or that information that wasn't considered at his initial hearing be reviewed and taken into account to advance his release date. These hearing examiners have gone so far as to accuse the governmental department that employs them of "hypocrisy, unfairness, and legal maneuverings". The hearing summaries are unabashed in their criticism of the Commissioner's previous rulings, yet nothing is done to assist the inmate.

My partner has had the rather incredible support of the Assistant United States Attorney requesting his release at both his initial hearing in 1998, and at a later

statutory interim hearing in 2006. At his initial hearing, the AUSA voluntarily wrote to the Commission and explained the mitigating circumstances surrounding his case- youth, lack of planning in the crime, lack of culpability, and his cooperation with authorities. My partner did not kill or injure anyone in the stupid actions that he took over 20 years ago, when he was 19 years old and an impressionable youth who made the serious mistake of getting mixed up with an older ex-felon. The AUSA recognized the mitigating circumstances and assumed that his opinion would carry a significant amount of weight. Yet the USPC's Administrative Reviewer who ultimately decided that parole was not a possibility for my partner made the colossal error in getting his facts wrong and writing that my partner did, in fact, injure someone during the crime. That mistake "set-off" his potential parole date 15 years, making him ineligible for parole until 2013. The statutory interim hearings that take place every 2 years offer no chance of setting a parole date, and my partner is still unsure of when he might be released.

In 2006, my partner finally received paperwork (via a FOIA request) that illustrated the error the Administrative Reviewer made at the initial hearing. Of course this error was discussed with the hearing examiner at his 2006 interim hearing. And although the AUSA, again, wrote a second letter to the USPC further clarifying the crime and asking for his release, the USPC denied that request and decided that the proper time to look at this new information was in 2013. The AUSA went so far as to write in a letter to the USPC, "it is believed that the establishment of this date [2013] may have been based on misinformation or lack of information, and does not take into consideration significant changes; the purpose of this letter is to 'correct the record' as well as recommend that the Commission set a release date of October 2007, the twentieth anniversary of the crime for the reasons which follow...." I find it utterly mind-boggling that the man responsible for putting my partner in prison has chosen to write to the Commission and ask for his release, and yet nothing has been done. In addition, he participated in the hearing and spent 45 minutes on a teleconference call attempting to get the USPC to understand their own error! Again, this was the Prosecuting Attorney for my partner. The USPC acted in such a flagrantly inept way as to cause the AUSA to become an advocate for my partner and requesting his release.

I must also add that my partner has been a model inmate for over 20 years. He has earned his GED and 2-year college degree. He has completed numerous courses relating to victim impact, anger control, and alcohol and drug counseling. He receives commendations from BOP staff and has a meticulous record of "0" infractions over the years. Yet at more than 40 years old, the Parole Commission continues to deny him release to the people who are ready and willing to help him reintegrate into society and get on with his life post-

incarceration.

We have been fortunate. I work in the non-profit sector of hunger relief and have copious amounts of support from others that are willing to work pro bono to secure the release of my partner. Other families are not so lucky. As I mentioned above, most people do not have access to the finances that it takes to work through the system and challenge their family member's case in the courts. It is not only financially draining, but also emotionally taxing for everyone involved.

The Sentencing Reform Act's intention was to abolish federal parole, and with it the United States Parole Commission. I understand that the Commission now has oversight over DC inmates, as well as others. This may make the abolishment of the Commission an impossibility at this juncture. However, it has created a "holding pattern" for many old-law inmates who are still bound to live within the complicated, arbitrary, and often capricious rules of the USPC. In my partner's case that equates to answering to a group of Commissioners and Examiners that are often at odds with each other, that liberally define their jurisprudence, and who lack the resources (staff, time, etc.) to fairly establish when a prisoner's chances of success upon parole are greater than what he is able to accomplish in prison. It is a waiting game that leaves many good, decent, and deserving people in limbo, tethered to a system that so often makes little sense and whose only recourse is to challenge the USPC in the courts. The courts often side with the inmates, as well, realizing that in many ways the USPC is not abiding their own rules that they are legally bound to follow.

There is the threat of retaliation by the Commission in speaking out about these injustices, particularly when a loved one's freedom rests with the whimsy of the USPC. I thank you for giving me the opportunity to present my opinion on this matter and hope that my words have an impact upon your decision to continue to allow the United States Parole Commission such latitude (via funding) in dictating the freedom or imprisonment of old-law offenders.

Sincerely,

Kate Mudge  
877 Tatum St.  
St. Paul, MN. 55104  
651-209-7921  
651-645-2541

TO: House Judiciary Subcommittee on Crime, Terrorism and Homeland Security

For: Hearing on Wednesday, July 16, 2008, on Reauthorization of the United States Parole Commission

Dear Honorable Members of the Subcommittee:

I am writing to urge you to deny reauthorization of the jurisdiction of the U.S. Parole Commission (USPC) over federal inmates sentenced prior to November, 1987, commonly known as "old law" inmates.

My husband is one of those "old law" inmates, so I have first-hand knowledge of the practices of the U.S. Parole Commission. In addition, I work as a legal assistant for a criminal defense law firm, so I am very familiar with the issues involved in matters of parole. I am also in contact with several other family members of "old law" prisoners.

In my opinion, the U.S. Parole Commission is failing to do the job they are funded to accomplish. First of all, I have never encountered a government agency which is as incompetent as the USPC in their daily operations. Over the years, on a routine basis, the USPC has lost submitted paperwork, failed to forward Notice of Action decisions to the Bureau of Prisons, set hearings and then rescheduled them causing inconvenience to all involved, and one of my husband's hearings was even advanced to an earlier date without notice to him or his representative. Freedom of Information Act requests are ignored for long periods of time unless it is an attorney requesting the documents and even then repeated contact is made requesting the documents. No documents are routinely provided without a FOIA request.

The USPC might suggest that they need more funding for staff in order to overcome this disorganization; however, I do not believe it's a matter of staffing; it is a matter of disregard for those under their jurisdiction.

If you would look at the cases of the "old law" inmates who have never been paroled, you will, I believe, find that a majority of them have filed court challenges to the USPC.; some on numerous occasions. There are allegations that the USPC repeatedly failed to follow its own administrative rules, policies and procedures. Inmates who had a mandatory parole date at 30 years are being denied parole and kept in custody longer. Many are set above the USPC guidelines. The USPC, as it is right now, reviews only the original crime committed, conjectures about criminal activity for which inmates have never been charged or convicted, and the inmate's criminal history. For these old-law inmates, these behaviors occurred more than 25 years ago.

(Continued)

## Testimony - Subcommittee on Crime, Terrorism and Homeland Security

Wednesday, July 16, 2008

Page 2

The USPC fails to consider the institutional behavior of the inmates, release plans, medical information, support letters from community members, and updated psychological evaluations. When this information is sent to the USPC in advance of a parole hearing, it goes into a "black hole." I have attended more than one parole hearing with my husband. When we appear at the hearing, the hearings examiner NEVER has had copies of these documents, which were sent well in advance of the hearing to Washington D.C. We have to present the documents at the hearing and the examiner plays "catch up." In addition, there is a pre-hearing summary prepared by a USPC staff person. The pre-hearing summaries never include any of the mitigating information presented, either for the hearing or any previous hearing.

The hearings examiner then conducts the hearing and makes his/her recommendation to the Commissioners. My husband has had six parole hearings in which the hearings examiner has recommended parole either in May, 2006, or in November, 2008. His 15-year-reconsideration hearing was advanced a year due to "superior program achievement." And yet the Commissioners continue to deny him parole, setting him out to another hearing in 2020. In my husband's case, where he committed bank robberies, no one was physically injured and no one killed. When he was originally sentenced, the judges authorized parole. What is the point of having parole hearings if the U.S. Parole Commission is not going to consider any mitigating information or any change of circumstance that has occurred since the commission of the crime; if the USPC is not going to accept the recommendations of its hearings examiners - the ones who actually meet with the inmate, the BOP counselor and the inmate's representative? There is no point, then, in having a parole commission.

The hearings examiner, who conducts the hearing, brings his recommendation and file back to the USPC office and then passes it to other examiners - or to higher level employees acting as examiners - who then give a more adverse recommendation to the Commissioners. In this way, the expertise of the actual hearings examiner is undermined and the decision becomes "result oriented" - the result being a denial of parole. There no longer is even-handed justice; the USPC essentially becomes an extension of the prosecutor.

In my husband's case, he was given a parole recommendation of May, 2006. The Commissioner decided he would be given a parole date of November, 2008, but cited erroneous facts about a minor disciplinary violation from more than 10 years previous in setting over his release date two years. He appealed that decision, having faith that the Administrative Rule of the USPC stating that, "an inmate cannot get a worse decision on appeal" would apply. The USPC set a new hearing for him and, with no new adverse information and after the hearings examiner recommended a parole date of November, 2008, it went to the Commissioners, who denied parole and set him out to 2020. If my husband had not appealed the first decision, he would be released this November. I cannot convey to you the shock and sorrow that was felt by my husband, myself and all our friends and family. I have worked in this justice system for 25 years and my faith in it was crushed by the actions of the USPC.

Testimony - Subcommittee on Crime, Terrorism and Homeland Security

Wednesday, July 16, 2008

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Since then, we have hired a lawyer and spent over \$20,000 on new hearings and Court actions. We are not alone. There are many "old law" inmates who do not have the funds to hire legal counsel and they struggle with trying to file their own legal challenges. Others have family or friends who are reduced to beggars, calling various lawyers to see if someone would help them pro bono or at reduced fees. Others have funds but why should they have to expend \$20,000 or more to hire lawyers to address the failings of the USPC?

It was the intent of Congress, to have the USPC set release dates for these inmates and expire years ago. These "old law" parole cases are all ending up in the federal court system anyway; it's time these decisions were turned over to the Courts and the U.S. Parole Commission only be funded to review the parole cases of D.C. inmates.

Thank you for listening to me. I know, from talking with others, that I speak for other "old law" inmates and their friends and families. It takes courage to speak up like this and many are hesitant to complain because their loved one, as mine is, is still "under the thumb" (more like a heavy boot) of the U.S. Parole Commission. I am trusting that your serious consideration of these matters will make it worth the risk of communicating with you.

Sincerely,

*Tricia Hedin*

Tricia Hedin  
1143 Oak Street  
Eugene, OR 97401  
Phone: 541-484-2611, ext. 102

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**U.S. Department of Justice**  
Office of Legislative Affairs

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Office of the Assistant Attorney General

*Washington, D.C. 20530*

April 4, 2008

The Honorable Richard B. Cheney  
President  
United States Senate  
Washington, D.C. 20510

Dear Mr. President:

Enclosed is draft legislation for your consideration that would provide for the continued performance of the functions of the United States Parole Commission. This Act would provide for the supervision of those under the Commission's jurisdiction after the current authority expires on October 31, 2008.

The Department is proposing a three-year extension of the Commission's authority, through October 31, 2011, while an internal working group evaluates the future of the Commission. This working group will review whether any changes to the Commission are necessary to reflect its decreasing federal parole responsibilities and evolving supervised release responsibilities for the District of Columbia. These changes may include transferring all or some of the Commission's functions to an entity or entities inside or outside of the Department of Justice.

Thank you for your attention to this matter. If we may be of additional assistance, we trust that you will not hesitate to contact us. The Office of Management and Budget has advised that there is no objection to the presentation of this proposal from the standpoint of the Administration's program.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian A. Benczkowski".

Brian A. Benczkowski  
Principal Deputy Assistant Attorney General



**U.S. Department of Justice**  
Office of Legislative Affairs

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Office of the Assistant Attorney General

Washington, D.C. 20530

April 4, 2008

The Honorable Nancy Pelosi  
Speaker  
United States House of Representatives  
Washington, D.C. 20515

Dear Madam Speaker:

Enclosed is draft legislation for your consideration that would provide for the continued performance of the functions of the United States Parole Commission. This Act would provide for the supervision of those under the Commission's jurisdiction after the current authority expires on October 31, 2008.

The Department is proposing a three-year extension of the Commission's authority, through October 31, 2011, while an internal working group evaluates the future of the Commission. This working group will review whether any changes to the Commission are necessary to reflect its decreasing federal parole responsibilities and evolving supervised release responsibilities for the District of Columbia. These changes may include transferring all or some of the Commission's functions to an entity or entities inside or outside of the Department of Justice.

Thank you for your attention to this matter. If we may be of additional assistance, we trust that you will not hesitate to contact us. The Office of Management and Budget has advised that there is no objection to the presentation of this proposal from the standpoint of the Administration's program.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian A. Benczkowski".

Brian A. Benczkowski  
Principal Deputy Assistant Attorney General

**DRAFT LEGISLATION EXTENDING LIFE OF U.S. PAROLE COMMISSION****A BILL**

To provide for the continued performance of the functions of the United States Parole Commission.

**SECTION 1. SHORT TITLE**

This Act may be cited as the "United States Parole Commission Extension Act of 2007".

**SEC. 2. AMENDMENT OF PUBLIC LAW 98-473**

For purposes of section 235(b) of the Sentencing Reform Act of 1984 (98 Stat. 2032) as such section relates to chapter 311 of title 18, United States Code, and the Parole Commission, each reference in such section to "21 years" or "21-year period" shall be deemed a reference to "24 years" or "24-year period", respectively.

**Section-by-section description  
of proposed legislation to extend the authorization  
for the United States Parole Commission**

The bill would extend the authorization for the United States Parole Commission for three years. Under current law, the commission's authorization will expire on October 31, 2008.





## U. S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

November 30, 2004

The Honorable J. Dennis Hastert  
Speaker  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Mr. Speaker:

This letter responds to § 11017(b) of the 21<sup>st</sup> Century Department of Justice Appropriations Authorization Act, Pub. L. 107-273, which stated that the Department of Justice should review and provide recommendations about the assignment of responsibility for the functions of the United States Parole Commission (USPC) regarding supervised release of District of Columbia offenders. We have conducted the evaluation contemplated by the legislation and have concluded that the USPC should continue to carry out these functions.

**Background**

Section 11017(a) of Pub. L. 107-273 extended the operations of the USPC for three years (until November 2005). Subsection (b) of the same section included the evaluation and planning provisions regarding USPC's future role, which are the subject of this letter.

- The Attorney General, not later than 60 days after the enactment of this Act, should establish a committee within the Department of Justice to evaluate the merits and feasibility of transferring the United States Parole Commission's functions regarding the supervised release of District of Columbia offenders to another entity or entities outside the Department of Justice. The committee should consult with the District of Columbia Superior Court and the District of Columbia Court Services and Offender Supervision Agency, and should report its findings and recommendations to the Attorney General. The Attorney General, in turn, should submit to Congress, not later than 18 months after the enactment of this Act, a long-term plan for the most effective and cost-efficient assignment of responsibilities relating to the supervised release of District of Columbia offenders.

The Honorable J. Dennis Hastert  
Page Two

Some historical context about the USPC and its role in relation to District of Columbia offenders is necessary for an understanding of the Department's deliberations and recommendations regarding this matter. The Sentencing Reform Act of 1984 prospectively abolished parole for Federal offenders, and replaced it with a new form of post-incarceration supervision, called "supervised release." Since it was expected that the existing functions of the USPC – granting parole, determining and modifying its conditions, and revoking parole – would apply to a limited and diminishing class of Federal offenders sentenced under the old sentencing law, the Sentencing Reform Act provided for the eventual abolition of the USPC. However, the USPC's existence was extended a number of times by subsequent amendments, most recently through the three-year extension of Pub. L. 107-273.

The expectation that the USPC would only carry out residual functions that eventually would disappear, or readily could be assigned elsewhere, changed with the enactment of the National Capital Revitalization and Self-Government Improvement Act of 1997 (Title XI of Pub. L. 105-33) (the "Revitalization Act"). Among other reforms, the Revitalization Act, along with related District of Columbia legislation, instituted reforms in the sentencing and supervision system for District of Columbia offenders, which in many respects were similar to those that the Sentencing Reform Act of 1984 had established for Federal offenders. Today in the District of Columbia, parole has been abolished for persons convicted of crimes committed after August 2000 ("new-law" offenders). These offenders receive determinate sentences – a definite term of imprisonment, followed in most cases by a period of supervised release which may continue for a number of years. During the period of supervised release, the offender's behavior is closely monitored under conditions determined by the USPC that are designed to protect public safety and maximize the likelihood of successful reentry into society.

These changes in the rules governing sentencing and supervision were accompanied by changes in governmental organization and assignments of responsibility, including making the Federal government responsible for District of Columbia correctional and supervisory functions comparable to those commonly handled by State agencies elsewhere in the country. For example, the Revitalization Act created a new Federal agency, the Court Services and Offender Supervision Agency ("CSOSA"), to supervise all District of Columbia offenders in the community on parole, probation, or supervised release. Further, the Act made the USPC responsible for adjudicatory and enforcement functions for District of Columbia offenders on parole or supervised release. These functions include making decisions about the granting of parole, conditions of parole, and revocation of parole for old-law District of Columbia offenders, and decisions about conditions of release, modification of those conditions, and revocation of supervised release for new-law District of Columbia offenders. As a result of these reforms, CSOSA

The Honorable J. Dennis Hastert  
Page Three

is responsible for day-to-day monitoring of District of Columbia offenders on parole or supervised release, and the USPC adjudicates requests from CSOSA to modify the conditions of such offenders' release or to revoke their release for new criminal activity or noncompliant behavior.

The assignment to the USPC of parole functions for District of Columbia offenders resulted in a large increase in its workload, which now predominantly concerns District of Columbia offenders. In 2003, for example, the USPC conducted 1,962 parole-release hearings and 1,820 revocation hearings. In each case, approximately 70% of the hearings involved District of Columbia offenders.<sup>1</sup> Only 58 of the revocation hearings in 2003 were for new-law District of Columbia offenders on supervised release. However, over the course of time, the proportion of the USPC's workload consisting of supervised release revocation hearings will grow as the paroled or "parolable" population of Federal and District of Columbia old-law offenders diminishes, and the workload is increasingly concerned with new-law District of Columbia offenders who have been sentenced to determinate prison terms followed by supervised release.

#### **Departmental Review and Conclusions**

As requested by Congress, the Attorney General established a committee to assess alternatives for the placement of the supervised release functions for District of Columbia offenders. The committee was chaired by the Office of the Deputy Attorney General and included representatives from the United States Attorney's Office for the District of Columbia, the Office of Legal Policy, the Criminal Division, the USPC, and the Justice Management Division. Personnel from the Justice Management Division provided staff support.

The activities of the committee and its staff included interviews and consultation with a wide range of interested institutions and their personnel, including: judges of the District of Columbia Superior Court and the United States District Court for the District of Columbia; CSOSA personnel; District of Columbia government managers; USPC personnel; United States Attorney's Offices and United States Probation Offices in the

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<sup>1</sup> The 1,962 parole-release hearings in 2003 can be broken down as 587 parole hearings for Federal old-law inmates and 1,375 parole hearings for District of Columbia old-law inmates. The 1,820 revocation hearings in 2003 can be broken down as 580 revocation hearings for Federal old-law offenders on parole, 1,182 revocation hearings for District of Columbia old-law offenders on parole, and 58 revocation hearings for District of Columbia new-law offenders on supervised release.

The Honorable J. Dennis Hastert  
Page Four

District of Columbia metropolitan area; victims' advocacy organizations; and offenders' rights groups. In addition, the committee had the Bureau of Justice Statistics develop, with assistance from the Bureau of Prisons and CSOSA, statistics and projections concerning the Federal and District of Columbia offender populations subject to the USPC's jurisdiction and related workloads. These activities provided a broad base of information and expert opinion that informed the committee's deliberations and recommendations. Based on this study, the Department of Justice has reached the following conclusions:

First, the original assumption of the Sentencing Reform Act of 1984 that the USPC eventually would become superfluous and simply could be abolished has been superseded by subsequent experience and developments. While the old-law Federal and District of Columbia offender parole populations will diminish with time, the decline will be slow and substantial related workloads will remain until the end of this decade and beyond. Moreover, the supervised release (as opposed to parole) revocation functions are now a permanent, growing feature of the District of Columbia sentencing and supervision system, and will need to be carried out permanently by some agency. The projections developed by the Bureau of Justice Statistics indicate that in 2010, for example, there will be a need for 1,152 parole-release hearings and 1,464 revocation hearings, including 805 supervised release revocation hearings for District of Columbia new-law offenders.<sup>2</sup>

Second, there is no District of Columbia or Federal agency, other than the USPC, with the staff, procedures, and infrastructure in place to effectively assume the existing functions of the USPC, including the functions specifically referenced in § 11017(b) of Pub. L. 107-123. Creating a new agency to assume these functions would entail transitional costs and potential disruption of adjudicatory functions related to offender supervision in the District of Columbia, with attendant risks to public safety.

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<sup>2</sup> The projected 1,152 parole release hearings in 2010 can be broken down as 263 parole hearings for Federal old-law inmates and 889 parole hearings for District of Columbia old-law inmates. The projected 1,464 revocation hearings in 2010 can be broken down as 347 parole revocation hearings for Federal old-law offenders, 313 parole revocation hearings for District of Columbia old-law offenders, and 805 supervised release revocation hearings for District of Columbia new-law offenders (component numbers do not sum to total due to rounding).

The Honorable J. Dennis Hastert  
Page Five

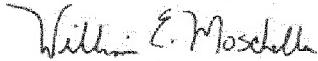
Third, the USPC provides impartial and expeditious determinations of release and supervision matters within its jurisdiction, in a manner that effectively protects public safety while ensuring fairness to offenders. Additionally, the USPC has worked to strengthen its connection to the District of Columbia community and to promote public understanding and acceptance of its role. Particular institutional assets of the USPC include: the expertise of its commissioners and hearing examiners in assessing the supervision needs and rehabilitation prospects of offenders; the USPC's use of research-based risk assessment tools as well as consistent, publicly articulated guidelines in its decision-making processes; and a multi-tiered process that normally involves review and concurrence by a second hearing examiner in the disposition proposed by the examiner who conducted a hearing and final review and approval by a commissioner.

Fourth, the transfer of the USPC's functions to another entity potentially would entail significant losses in the effectiveness of supervisory functions. For example, transferring these functions to a local judicial forum, in which release revocation determinations would reflect discretionary decisions of individual judges, would sacrifice many benefits of the USPC's processes. As noted above, these include consistent treatment of similarly situated offenders through the application of published guidelines and multi-tiered decision-making, the use of empirically-based rating criteria, and extensive expertise in formulating conditions of release and deciding whether to revoke release. To preserve these strengths in transferring these functions to another administrative agency, the agency in question would have to be staffed and operated in much the same manner as the USPC.

Accordingly, we believe that the USPC should continue to carry out its functions relating to the supervision of District of Columbia and Federal offenders.

Thank you for the opportunity to present our views. Please do not hesitate to call upon us if we may be of additional assistance. The Office of Management and Budget has advised us that, from the perspective of the Administration's program, there is no objection to submission of this letter.

Sincerely,



William E. Moschella  
Assistant Attorney General



## COURT SERVICES AND OFFENDER SUPERVISION AGENCY

*for the District of Columbia*

# CSOSA Fact Sheet

### CSOSA MISSION & CRITICAL SUCCESS FACTORS

The Court Services and Offender Supervision Agency (CSOSA) supervises men and women on probation, parole, or supervised release in Washington, DC. The core of CSOSA's mission is to increase public safety and prevent crime by reducing re-offending. To do this, CSOSA works to reduce rearrests, improve education levels, increase employment rates, and reduce drug use among the approximately 15,500 offenders that CSOSA's Community Supervision Officers (CSO's) supervise on any given day.

CSOSA has identified four Critical Success Factors necessary to encourage offender accountability and opportunities to develop skills and resources that contribute to crime-free and drug-free behavior.

#### CSF 1 Improved Risk-Needs Assessment Techniques

#### Risk & Needs Assessment

**CSOSA SCREENER & CASE PLANNING:** CSOSA assesses each offender's risk to the community and social needs. The results of the assessment comprise a supervision plan intended to guide the offender's supervision process.

#### GSF 2 Close Supervision

#### Close Supervision

**HIGH LEVELS OF CONTACT:** Offender risk level, determined by the CSOSA screener, guides the frequency with which offenders must report to Community Supervision Officers.

**NEIGHBORHOOD-BASED SUPERVISION:** In order to place Community Supervision Officers and facilities close to the neighborhoods where offenders live, CSOSA operates six field units, two com-



*CSOSA Field Office at 25 K St NE.*

munity-based learning labs, and the Reentry & Sanctions Center, a residential substance abuse treatment preparation facility.

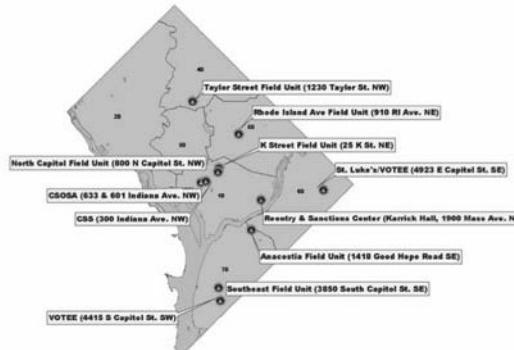
**CSOSA-LAW ENFORCEMENT PARTNERSHIPS:** Community Supervision Officers and police officers (from the Metropolitan Police Department and the DC Housing Authority Police) routinely share information on high-risk offenders, conduct Accountability Tours – in which a CSO and a police officer visit offenders

in the community, and host Mass Orientations — in which police and CSO's meet with offenders just released.

**SURVEILLANCE DRUG TESTING:** Frequent contact with CSO's is supplemented by drug testing, ranging from twice weekly to once monthly.

**GRADUATED RESPONSES:** Swift and certain sanctions for rule breaking are a key to successful supervision. Sanctions include increased in-person contacts, day reporting, electronic and Global Position System (GPS) monitoring, increased drug testing, community service, and short-term residential placement.

**REPORTING VIOLATIONS:** New arrests and repeat violations of probation, parole, or supervised release conditions result in reports of alleged violations to the United States Parole Commission or the appropriate releasing authority.



*CSOSA Offices and Learning Labs by Police District*

*For additional information, contact the CSOSA Office of Legislative, Intergovernmental and Public Affairs at (202) 220-5333.  
www.csosa.gov*

## COURT SERVICES AND OFFENDER SUPERVISION AGENCY

<p><b>CSF 3</b></p> <p><b>Treatment and Support Services and Treatment</b></p> <p><b>S U B S T A N C E A B U S E T R E A T M E N T:</b> CSOSA assesses high-risk offenders' addiction severity to make clinically appropriate treatment placements.</p> <p>The agency's fiscal appropriation allows for CSOSA to meet 25% of the population's addiction treatment need. CSOSA refers lower-risk offenders to the DC Department of Health, Addiction Prevention and Recovery Administration (APRA), the agency primarily responsible for addressing the substance abuse treatment needs of eligible District residents.</p> <p><b>REENTRY AND SANCTIONS CENTER:</b> CSOSA opened its Reentry and Sanctions Center in February 2006. The Reentry and Sanctions Center provides offenders with a 28-day assessment and treatment preparation program prior to placement in residential or outpatient programming.</p> <p><b>VIOLENCE REDUCTION PROGRAM:</b> The Violence Reduction Program (VRP) is a three-phase treatment intervention for men, aged 18-35 with histories of violent, weapons, and/or drug distribution convictions.</p> <ul style="list-style-type: none"> <li>• Phase I: Assessment and Treatment Readiness</li> <li>• Phase II: Cognitive-Behavioral Therapy</li> <li>• Phase III: Aftercare and Community Reintegration</li> </ul> <p>The goal of the Violence Reduction Program is to help offenders:</p> <ul style="list-style-type: none"> <li>• Develop non-violent approaches to conflict resolution</li> <li>• Increase problem-solving skills</li> <li>• Adopt communication styles that improve social skills</li> <li>• Establish an alternative peer network by promoting pro-social supports and accountability networks</li> <li>• Learn and apply skills to regulate anxiety</li> </ul> <p><b>EDUCATION &amp; EMPLOYMENT:</b> The Vocational Opportunities for Training, Education, and Employment (VOTEE) unit assesses and responds to the individual educational and vocational needs of offenders. The</p>	<p><b>Treatment and Support Services</b></p> <p>unit also provides adult basic education and GED preparation courses at one of four learning labs staffed by CSOSA Learning Lab Specialists. In addition, VOTEE actively maintains partnerships with the State Education Agency, Adult Education Office in collaboration with the University of District of Columbia to provide literacy services. The DC Department of Employment Services provides employment training, and placement services.</p> <p><b>CSF 4</b></p> <p><b>Partnerships</b></p> <p><b>COMMUNITY JUSTICE ADVISORY NETWORKS:</b> CSOSA's Community Relations Specialists maintain Community Justice Advisory Networks (CJAN's), which are designed to resolve key public safety issues/concerns resulting in an improved quality of life throughout the District of Columbia. CJAN's are comprised of residents and key stakeholders, such as Advisory Neighborhood Commissioners, faith based institutions, schools, civic organizations, businesses, nonprofit organizations, government agencies and local law enforcement entities. CJAN's function</p>	<p>cal screening and evaluations, counseling, and community-based support services for offenders with diagnosed mental health disorders.</p> <p><b>ID &amp; BENEFITS:</b> CSOSA verifies an offender's address to assist him or her in obtaining non-driver's identification from the Department of Motor Vehicles. CSOSA also directs offenders to appropriate DC Department of Human Services offices to apply for social services or healthcare insurance for self and/or family.</p> <p><b>PHYSICAL HEALTH/DISABILITY:</b> CSOSA does not provide any direct health-related services. The agency does counsel offenders to register for the DC Healthcare Alliance or Medicaid if they are eligible. DC Healthcare Alliance provides insurance coverage for residents who meet income requirements. DC Department of Health offers primary healthcare at neighborhood clinics operated by the DC Health and Hospital Public Benefit Corporation.</p> <p><b>COMMUNITY SERVICE PROGRAM:</b> CSOSA refers offenders with court-ordered community service requirements to non-profit organizations that provide a wide range of services that benefit District of Columbia residents. CSOSA also enters agreements with non-profit organizations and civic groups that host one-time events intended to achieve community improvements, such as cleaning up and installing playground equipment in a park. The Community Service Program seeks to encourage a sense of investment in the community on the part of offenders while strengthening the community's commitment to embrace all members of the society.</p>
		 <p><b>CSOSA/Faith Community Partnership</b></p> <p>within each of seven police districts throughout the city.</p> <p><b>CSOSA FAITH COMMUNITY PARTNERSHIP:</b> The CSOSA Faith Community Partnership is designed to provide mentors for returning offenders and establish a network of faith-based institutions that may have housing, employment, substance abuse, or other resources that can benefit men and women returning from prison.</p> <p><b>MENTAL HEALTH:</b> CSOSA refers offenders to contract psychologists for mental health screening to determine need for more in-depth psychological evaluation and treatment. The DC Department of Mental Health provides mental health psycholog-</p>



CSOSA offenders engage in community service





**U.S. DEPARTMENT OF JUSTICE  
United States Parole Commission**

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August 18, 2008

Honorable Bobby Scott, Chairman  
Subcommittee on Crime, Terrorism,  
and Homeland Security  
Committee on the Judiciary  
United States House of Representatives  
Washington, D.C. 20515-3951

Dear Chairman Scott:

During my testimony at your Subcommittee's July 16 hearing on reauthorization of the Parole Commission, three questions were raised that I was asked to respond to in writing. The questions are (1) can it be estimated when there will no longer be federal parolees in the criminal justice system (by Rep. Gohmert, transcript p. 34); (2) how do supervision officers function, how do they assess persons under supervision, and what kind of training do they receive (Rep. Jackson Lee, transcript pp. 40 and 41); and (3) can the Parole Commission be tasked with any responsibility under H.R. 261 (Rep. Jackson Lee, transcript p. 40).

With regard to the first question, it is very difficult to determine when the final federal parolee will leave the system because of the many variables. Most of the federal inmates currently in prison are serving long sentences for very serious crimes. It cannot be predicted with certainty when such persons will be released. Parolees serve out the remainder of their terms in the community under supervision. However, if parole is revoked for commission of a new offense or for absconding from supervision, a parolee loses credit for the time on parole, thereby extending the period of time the parolee will be in the system. During an extensive study conducted within the Department of Justice some four years ago, it was estimated that it could be 2025 before the last federal parolee leaves the system.

I regret that I am unable to respond directly to the question concerning supervision officers. The Parole Commission does not engage in the direct supervision of persons under its jurisdiction. Federal parolees are supervised by United States Probation Officers, who are employees of the federal courts. D.C. Code offenders under Parole Commission jurisdiction are supervised by the District of Columbia Court Services and Offender Supervision Agency (CSOSA), a federal agency established by the D.C. Revitalization Act. I am notifying Assistant Director John Hughes, Administrative Office of the United States Courts, and Adrienne Poteat,

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Acting Director of CSOSA, of the question raised during the hearing about the functions and training of supervision officers.

With regard to H.R. 261, the bill would authorize the early release of certain offenders. The bill would amend 18 U.S.C. § 3624 to direct the Bureau of Prisons to release from prison a prisoner who has served at least half of the term of imprisonment if that prisoner is at least 45 years old, has never been convicted of a crime of violence, and has not engaged in violent conduct violating prison disciplinary regulations. Under the bill as drafted, there is no function that the Parole Commission could perform. Although the bill does not expressly address post-release supervision, it would seem that all persons covered by the legislation would have a term of supervised release to follow imprisonment and would be supervised under the provisions relating to supervised release in title 18 U.S.C. of the United States Code.

Once again, I thank you for the prompt action on the legislation extending the life of the Commission. If I can be of further assistance, please do not hesitate to let me know.

Sincerely,

EDWARD F. REILLY, JR.  
Chairman

cc: Rep. Louis Gohmert

